

PTE-E Rules Advisory Committee – Summary

Amended Rules

Several Oregon Administrative Rules for personal income tax need to be amended to provide clarity about the new Pass-Through Entity – Elective Tax (PTE-E). Rules for Oregon’s PTE-E tax were enacted by [SB 727](#) during the 2021 legislative session. This bill allows certain PTEs to elect to pay income tax at the entity level. Individual owners will still report their income from the PTE and will be taxed on that income. However, they will be able to claim a credit on their individual returns for the tax already paid by the PTE. The provisions in SB 727 were amended by [SB 1524](#) during the 2022 legislative session to require electing PTEs to make quarterly estimated tax payments.

SB 727 was enacted to provide a way for certain business owners to avoid the \$10,000 limit on the federal deduction for state and local taxes (SALT) paid by individuals. The SALT limitation was imposed for tax years 2018 through 2025 by the so-called “Tax Cuts and Jobs Act,” Public Law 115-97. The \$10,000 limit only applies to a deduction taken by an individual; it does not apply to the deduction for taxes paid by businesses.

SB 727 allows certain pass-through entities (PTEs) whose members are all individuals (or other PTEs whose members are all individuals) to elect to pay state income tax (the PTE-E tax) at the entity level. The PTE-E tax is deducted on a federal return filed by the entity; the entity’s income after the deduction is passed through to its individual owners and taxed on their personal income tax returns. SB 727 refers only to tax years beginning on or after January 1, 2022 and before January 1, 2024 for purposes of making the election and claiming the credit.

Program is proposing to update and amend these rules to align with statute and changes by SB 727:

[150-316-0084\(2\)\(f\)](#)

Program is proposing to amend the rule to state: “Net tax” means state income tax liability (whether Oregon or the other state) after all credits except the credit for taxes paid to another state and PTE-E tax credit.

[150-316-0043](#)

Program is proposing to amend the rule to allow the addition for the Oregon tax to be considered a part of the income used in qualified business income for the qualified business tax rate.

[150-314-0515\(1\)\(b\)](#)

Program is proposing to amend the attached PDF for credits and deductions that may or may not be allowed for the qualified electing owners in the rule to allow a credit for PTEs electing to pay the PTE-E Tax.

[150-314-0520](#)

Program is proposing to amend the rule to indicate generally that PTE will not be required to withhold under [ORS 314.781](#) if they elect to pay the PTE-E tax.

New Rule: PTE-Tax Fiscal Filers

For reasons of administrative efficiency, the department wants to make filing the return for the PTE-E tax available only on a calendar year basis. For this reason, entities using a fiscal year other than a calendar year for accounting purposes will require guidance in order to correctly make the calendar-year election.

Personal income taxpayers who are members of electing entities will also require guidance with regard to the tax year for which they will report an addition for PTE-E tax deducted on the entity's federal return and claim a credit for the PTE-E tax paid by the entity.

SB 727 refers only to tax years beginning on or after January 1, 2022 and before January 1, 2024 for purposes of making the election and claiming the credit. DOR has decided that for administering the PTE-E tax would be more efficient if the election is made on a calendar-year basis. Therefore, the election will be available for calendar years 2022, 2023, and 2024 for entities whose tax years begin in 2022 or 2023 and end in 2022, 2023, or 2024.

For practical reasons, individual owners of electing entities will not receive information about the addition or credit until after the entity's fiscal year has ended. Although SB 727 specifies that the credit may only be claimed for tax years beginning in 2022 or 2023, DOR believes that achieving revenue neutrality requires that the credit be made available to calendar-year owners of PTEs making the election for calendar year 2024.

New Rule: PTE-E Estimated Payments and UND Calculation

The pass-through entity elective tax (PTE-E tax) created by SB 727 in 2021 is available for tax years beginning on or after January 1, 2022, and before January 1, 2024. In 2022, SB 1524 amended section 5 of SB 727 to require PTEs to make estimated tax payments. Guidance will be needed as to how to calculate estimated payments and interest on underpayments of estimated tax (UND).

DOR is basing its PTE-E estimated payment requirements on the current requirements for making estimated payments of personal income tax, under [ORS 316.557 to 316.589](#). The annual estimated tax amount will be made in four (quarterly) installments, with due dates on a calendar-year basis for all filers making the election regardless of the tax year used for accounting purposes.ⁱ Installment payments may be determined using the regular or annualized income methods.

Regular installment method. Regular installment payments are equal to 25 percent of the annual required payment.ⁱⁱ

Annualized installment method. The annualized installment method is used by taxpayers who don't receive income regularly throughout the tax year. The installment amounts are based on income received during cumulative installment periods. The cumulative income is multiplied by an annualization factor to arrive at an annual amount, which is then used to calculate the quarterly installment payment.ⁱⁱⁱ

Installment periods. Even if (quarterly) installment payments are equal amounts, the time periods covered by the "quarters" are not equal: the first quarter covers the first three months of the tax year, the second quarter covers the next *two* months, the third quarter covers the next three months, and the fourth quarter covers the last *four* months of the tax year. If a filer is annualizing their income, they will calculate their installments based on income received during the first three, five, and eight months of the year, with the final installment based on the total income received for the entire year.

Payment due dates. Our instructions will tell fiscal filers to calculate their estimated tax payment amounts based on the time periods in their fiscal year. The due dates for making those payments, however, will correspond to the due dates for those time periods in the calendar year.

For example, a filer with a fiscal year that starts on May 1, 2022 will make the election for calendar year 2023. If they annualize their income, they will calculate and make their estimated tax payments as follows:

Income received	Payment due date
May through July, 2022	April 18, 2023
May through September, 2022	June 15, 2023
May through December, 2022	September 15, 2023
May 2022 through April 2023	January 16, 2024

ⁱ For example, the due dates for tax years beginning on or after January 1, 2022 and before January 1, 2023 are June 15, 2022 (for both the first and second quarterly payments), October 17, 2022, and January 17, 2023.

ⁱⁱ The required annual payment is the amount of estimated tax that must be paid in order to avoid paying UND. For tax years beginning in 2022, the required annual payment is 90 percent of the tax shown on the return. For tax years beginning in 2023, the required annual payment will be 100 percent of the tax shown on the 2022 return, if filed, or 90 percent of the tax shown on the 2023 return.

ⁱⁱⁱ The word "income" is being used to denote the sum of the distributive proceeds from Oregon sources that forms the basis for the PTE-E tax. The word "income" is shorter. Note that, in general, the installment payment amount for a previous period is subtracted from the amount for the later period. For example, the installment payment based on annualized income received during the first three months of the tax year is subtracted from the payment based on annualized income received during the first five months of the year, and so on.