

Pass-Through Entity Elective Tax

Background

[SB 727 \(2021\)](#) created a revenue neutral program we now call the Pass-Through Entity - Elective (PTE-E) tax. It is designed as a workaround for the federal state and local tax (SALT) deduction limitation, by allowing taxpayers to reduce their federal tax liabilities without changing net state revenue. In 2021, PTE-E was approved to be a two-year program beginning with tax year 2022 and ending in tax year 2023. [HB 2083 \(2023\)](#) extended the program for two additional years with the program ending in tax year 2025.

The initial filing season for the PTE-E program was in 2023. The department received more than 17,800 PTE-E returns and individuals claimed more than 22,500 PTE-E tax credits. In this initial filing season, we experienced a higher than normal rate of returns that needed to be manually reviewed to ensure that PTE-E tax payments were reconciled with the refundable credits claimed on the member returns.

The program is not adequately resourced to support the manual review, the complexities of issues related to PTE's, and now the extension of the program an additional two years. The department was asked to return in 2024 to request additional positions related to HB 2083. Based on discussions during January 2024 legislative days, the department anticipates approval for two additional positions to address the current workload as well as the workload associated with extending the program until tax year 2025, and through the 3-year life-cycle of returns - 2029.

Inclusion of trusts as qualified members

Under current law, pass through entities with a trust as a member disqualifies the pass-through entity and the other members from electing the PTE-E tax and from receiving the benefit of the SALT limitation workaround. Senate Bill 1526 proposes to include trusts as qualifying members of the PTE-E tax starting in tax year 2024

Under SB 1526, the inclusion of trusts is expected to increase the number of pass-through entities electing to file the PTE-E tax and members claiming the PTE-E credit. Trusts will not be able to transfer the credit to its beneficiaries; however, the trust will receive a benefit by filing a return and claiming the PTE-E refundable tax credit.

Including trusts as members will increase the workload in our program area that processes trust returns. The department will need to change the form and our processing systems to handle the PTE-E refundable credit. Trust issues tend to be more complex and there will be more returns that need to be reviewed manually. The program is scheduled to end after tax year 2025. Returns for tax year 2025 are filed in the 2026 calendar year and the normal lifecycle of a return is three years, in this case 2029, for taxpayers to amend and for DOR to address any compliance issues.

Property Tax

Affordable Housing Exemption

The department suggests that **Section 1** be deleted. The exemption is administered as a 100 percent exemption of eligible portions of the property and zero exemption for portions not used for eligible purposes. Section 1 does not create a benefit for the taxpayer and adds unneeded work for the department and county assessors.

Repealing Unused Deferral Program for Special Assessments

Section 12 repeals several obsolete statutes. However, the department still uses ORS 311.711 in the rare case when a taxpayer or interest-holder may request a lien release for property in collections. The department also still needs reference to the special assessment deferral program in **Section 22** of the bill, to ensure we remain authorized to cover administrative costs of collections for the program, and in **Section 23** of the bill for collections purposes.

Related to Section 12, the collections language in **Section 13** refers to debt of “any person” prior to the “effective date of this 2024 act.” Since property tax debt is against property rather than persons, it is suggested that the section read: “Notwithstanding the repeal of . . . all deferred balances shall remain due and payable and subject to collection and foreclosure as under those statutes in effect prior to the effective date of this 2024 act.”

Corporate Activity Tax

Exclusions

The department suggests that **Section 26** be deleted, and the concept be refined during the interim. Section 26 modifies the definition of commercial activity by eliminating 18 specific exclusions and adding one new exclusion for “Taxes, fees, surcharges or similar amounts collected from customers and passed, as required, to a governmental entity.” The new language is both broad and narrow.

Broadly, it could be interpreted to include costs passed on to the customer that are imposed directly on the taxpayer. For example, the vehicle privilege tax is imposed on sellers of taxable motor vehicles and may be collected by the seller from the customer. ORS 320.405. The seller is not required to collect the tax from the customer, but they are required to pay the tax to the Department of Revenue. The new provision may be interpreted to allow a business to exclude from corporate activity tax amounts passed on to the customer that are imposed directly on the business. Modifying the language to apply to “...amounts **required to be** collected from customers and passed to **the imposing authority**” is believed to resolve this concern.

Narrowly, some of the current exclusions would not be included in the new exclusion. For example, current exclusions for taxes or fees imposed at the production or distribution level for administrative convenience would be eliminated under section 26. However, these amounts are not explicitly required to be collected from the retail customer. Retaining specific exclusions for tax imposed at the production or distribution level would ensure they remain excluded from corporate activity tax.

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