



COMPTROLLER of MARYLAND

Brooke E. Lierman
Comptroller

Andrew (Andy) Schaufele
Chief Deputy Comptroller

February 28, 2024

Re: Pass-Through Entity Tax Return Processing

Dear Tax Professional,

Greetings and happy tax season! We are writing to follow up on previous communications about the ongoing work we are doing to address questions, concerns, and challenges you and your clients have brought to us with respect to filing Maryland personal income tax returns that request refundable credits from pass-through entities that are paying the PTE entity-level tax.

We will not repeat the history of the challenges which can be found in our September 19, 2023, letter attached to this communication.

First, we are happy to share an update on our work to reduce our backlog of PTE returns. In part thanks to your efforts to make payments and filings via electronic means, we have greatly reduced the average processing time for a PTE member's return. In addition to increased electronic filing rates, we have: (1) increased the number of staff trained to process these returns and adjudicate the credits; (2) supported the processors with complimentary reporting technology that amalgamates the various data sources to increase the efficiency of the return's processing; (3) adjusted policies regarding K-1s; and (4) expedited reviews of certain credit amounts. As a result of these activities, our average processing time for these returns has decreased from 100 days to 30. Despite these strides, we are not done yet: we are continuing to work to reduce that average further and to ensure that our credit adjudications are accurate.

Second, we understand that some tax preparers did not follow our Agency's requirement that if a PTE is making the election to pay the entity level tax with regard to all members' shares, the election must be made on the **first filing** of the tax year. As of November 2023, approximately 80% of PTEs that elected to pay the entity level tax in tax year 2022 followed the instructions and correctly elected with their first filing for tax year 2023. Both our taxpayer accounting and Legal Division have communicated with tax preparers who had intended to elect to file using a PTE, but had failed to elect on the first filing of the year. Several other states have also adopted this approach, based on long-standing examples of other irrevocable elections at the federal level. The purpose of our Agency's approach is to provide more efficient processing for PTEs and their members. Through the implementation of this rule, we can streamline the work to ensure that the Agency can be more responsive to everyone's needs.

Some tax preparers did not make the election in the first filing for tax year 2023 and this failure will adversely affect their clients. To work in partnership with tax preparers who did not timely make the election and despite the additional burdens this will place on our agency, **we are willing to allow taxpayers to make the election on the annual form (Form 511) for tax year 2023 only.**

To accomplish this waiver: **the PTE wishing to make the election to pay the entity level PTE tax for tax year 2023, even if they did not make the election with the first filing of tax year 2023, should electronically file Form 511 with a full and accurate list of member information detailed on schedule B.** This is sufficient to notify the Comptroller of the PTE's intent and to create the internal work item on our end.



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Please remember that to best facilitate processing for this exception as well as for those that elected properly, these key steps support faster and more accurate processing:

1. File and pay all estimated payments electronically (and elect properly for tax year 2024 payments);
2. File the PTE return electronically and ensure that payments made by that PTE sum to the amount of resident credits being claimed;
3. File the member returns electronically and include the relevant K-1s; and
4. Ensure that the member files subsequent to the PTE filing, we need the PTE return filed and in balance in order to allocate the payment credits to the members

For tax year 2024, the election must be made, if at all, with the first filing of the tax year, whether that filing is a quarterly estimated declaration payment or other filing. The election made with the first filing is irrevocable. Once the election is made for the tax year to remit tax at the entity level on behalf of only nonresident members or with respect to all members' shares, the same box must be checked with all subsequent filings. This requirement ensures that we can process the PTE and member returns in the most efficient and accurate manner possible.

To further assist practitioners and taxpayers, we have updated the tax year 2024 Form 510/511D to indicate that making the election or non-election is mandatory.

MANDATORY: You must select either Box A or Box B. The choice you make on your first filing of the tax year is irrevocable for the tax year. If this is not the first 510/511D for the tax year, your selection must match the selection you made on your first filing of the tax year.

Box A: Check here if PTE has made the irrevocable election for Tax Year 2024 to remit tax with respect to all members' shares. See instructions.

Box B: Check here if paying tax only on behalf of nonresident members.

Failure to check either Box A or Box B on the tax year 2024 forms is a failure to make the election. In the case where no box is checked, the Comptroller will deem the entity to have chosen to pay tax only on behalf of nonresident members as per the statutory mandate, and that decision will be irrevocable for the tax year. If both boxes are checked in error, the Comptroller will deem you have elected to pay tax on behalf of all members' shares, and that decision will be irrevocable. Additional instructions regarding procedures for making the election or nonelection with the tax year 2024 Q1 estimated payment, see the Instructions on Form 510/511D.

Please direct any questions to the email address above.

Sincerely,



Andrew "Andy" Schaufele

cc: Brooke Lierman, Comptroller