

# Virginia Pass-Through Entity Tax (PTET) Frequently Asked Questions

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## Does Virginia Tax apply the PTET credit before or after income tax payments?

There is no prescribed order in which we apply the PTET credit and income tax payments. As explained in the [Final Elective Pass-through Entity Tax Guidelines](#), the ordering rules for Virginia income tax credits are as follows:

1. Credits that are structural in nature.
2. Credits that do not have a statutory carryforward or refundable feature.
3. Credit carryforwards to the taxable year, in the order of those carryforwards which are scheduled to expire first.
4. Current year credits, based on the order of those with the shortest carryforward period first.
5. Refundable credits.

Among other things, refundable credits include:

- ▶ The PTET Credit,
- ▶ The Motion Picture Production Tax Credit,
- ▶ The Agricultural Best Management Practices Tax Credit,
- ▶ The Research and Development Tax Credit,
- ▶ The Conservation Tillage and Production Tax Credit,
- ▶ The refundable portion on the Earned Income Tax Credit,
- ▶ Estimated Tax Payments,
- ▶ Extension Tax Payments, and
- ▶ Income Tax Withholdings.

In computing an individual's Virginia income tax liability, our systems apply all of the refundable credits above together simultaneously following the application of current year credits. As a result, there is no prescribed order programmed into our systems that dictates which refundable credits are applied first.

**A Pass-Through Entity (PTE) makes the PTET election and files a PTET return properly, showing no tax liability for Taxable Year 2023. When the entity files its Taxable Year 2024 return, will it qualify for the Tax (PTET) on prior year's income using current year's rates exception from the estimated payment addition to tax, assuming the other requirements of that exception are met?**

Yes. Unlike the prior year's tax exception, the tax on prior year's income using current year's rate exception does not require that there was a tax liability for the prior year. Therefore, so long as the other requirements of the exception are met, the mere lack of a tax liability on the prior year return will not disqualify the PTE from availing itself of the exception.

**Does an electing PTE need to make non-resident withholding payments on behalf of non-resident partners that are PTEs?**

No, partners that are PTEs are exempt from withholding, regardless of whether a PTET election is made.

**Can a non-Virginia PTE that does not have Virginia-source income nor any Virginia tax filing requirements make the election and pay the Virginia PTET on behalf of its partners, owners, or members that are Virginia residents?**

Yes, PTEs with no Virginia-source income are permitted to make the PTET election.

**When calculating the estimated payment addition to tax for individual owners, should PTET credits be included in income tax liability on Line 1 of the Form 760C?**

Yes. The PTET credit should reduce the tax liability amount used to compute the addition to tax. Therefore, if the individual's tax liability before credits is \$1,000 but the individual is eligible to claim a \$100 PTET credit and a \$400 land preservation credit, the amount on Line 1 of the Form 760C would be \$500. The applicable PTET credit should similarly be included on Line 3 of the Form 760C.

**When calculating the estimated payment addition to tax for individual owners, should the PTET be included as payment on Form 760C?**

No. PTET payments are not considered payments of an owner's individual income tax liability. Instead, they are payments of the PTET liability of the PTE itself. Therefore, they should not be included as payments on the Form 760C.

However, as explained in the preceding question, the PTET credit can (like other income tax credits) reduce the tax liability reported on Lines 1 and 3 of Form 760C.

## **Virginia PTET Frequently Asked Questions Applicable to Taxable Year 2021 Only**

**Does a PTE making the retroactive 2021 PTET election have to issue amended 2021 VK-1s?**

We are not providing a designated form for electing PTEs to provide information on the 2021 PTET credit to eligible owners. Instead, PTEs have discretion to use any format they choose as long as it includes the eligible owner's share of the retroactive credit and instructions for claiming the credit on their Taxable Year 2023 returns. The 2021 PTET credit information should not be added to 2023 Schedule VK-1s and in no case should eligible owners amend their 2021 return to claim the 2021 PTET credit.

**What if there has been a change in ownership since Taxable Year 2021?**

The [Retroactive Taxable Year 2021 Pass-through Entity Tax Guidelines](#) do not specify whether the 2021 PTET credit is distributed to the eligible owners as they existed in 2021 or 2023. Therefore, in lieu of distributing the

2021 PTET credit to eligible owners as they existed in 2021, the PTE has the option of distributing the 2021 PTET credit based on its ownership in Taxable Year 2023. As explained in the Retroactive Taxable Year 2021 Pass-through Entity Tax Guidelines, each electing pass-through entity decides how to obtain consent from its eligible owners; provided, however, the election is binding on all the eligible owners once the election is made. This includes the choice whether to distribute the 2021 PTET credit based on the entity's ownership in 2023.