



Nebraska Society of Certified Public Accountants Nebraska Pass-Through Entity Tax (PTET) Tips and Examples

The Tax Cuts and Jobs Act (Pub. L. No. 115-97) amended IRC § 164 to limit the deduction individuals can claim for state and local taxes (“SALT”) to \$10,000 (\$5,000 for married individuals filing separately) from 2018 through 2025. Many states have enacted legislation for individuals who conduct business through a pass-through entity to shift the state tax burden from the individual to the entity and reduce the impact of the federal SALT cap. Out of the 41 states that impose an individual income tax, nearly all have implemented a pass-through entity tax (“PTET”) as a SALT cap workaround.

In May 2023, LB754 was signed by Governor Jim Pillen. This law added Nebraska to the list of states with a PTET election available. The pass-through entity (“PTE”) claims a federal tax deduction for the state income tax payments that are paid in lieu of the individual’s state income tax obligation on pass-through entity income.

Each state’s PTET elections are set up a little differently and Nebraska’s PTET election is no exception to that rule. Nebraska’s PTET election has some nuances and has resulted in a lot of questions about how to address certain issues.

The following information is being shared with NESCPA members in an effort to help our members with implementation of this new law and provide tips and examples.

2023 Nebraska PTET Election:

1. The partners/shareholders of an electing PTE can claim a credit for the Nebraska PTET paid on their behalf. The credit occurs in the year the PTE claims the deduction on the federal income tax return.
2. The Nebraska Department of Revenue has interpreted the statute to provide that if PTET attributable to the entity’s 2023 taxable income is deducted on the 2024 Federal Form 1065 or 1120S, the Nebraska credit will offset the partners/shareholders’ 2024 Nebraska individual income tax.
3. IRS Notice 2020-75 provides guidance on the deductibility of PTET by partnerships and S corporations. Sec 3.02 of this notice states that the pass-through entity is allowed a deduction in computing its federal taxable income for the taxable year in which the payment is made. The notice does not distinguish between cash-basis and accrual-basis taxpayers. IRS and Treasury have announced they intend to issue proposed regulations with additional guidance, but have not done so yet.
4. If the taxpayer intends to match up the 2023 PTET credit to offset 2023 Nebraska state income tax, the PTE should take steps to ensure the deduction occurs in 2023. For an electing calendar year-end pass-through entity, it is recommended the PTE file the Pass-Through Entity Tax (PTET) Election and make the payments by December 31, 2023, to ensure the 2023 PTET credit will align with the 2023 Nebraska taxable income.
5. A PTE can make the PTET election with a timely filed 2023 Form 1065N or Form 1120-SN. As noted above, most electing pass-through entities will want to make the election by December 31, 2023.
6. The pass-through entity is not required to obtain signed 12N forms for non-resident partners/shareholders if the entity makes the PTET election for that tax year.
7. Non-resident partners/shareholders are not required to file a Nebraska return if their only Nebraska-sourced income is from entities that made a PTET election and paid the associated income tax for that year.
8. Nebraska partnership and S corporation tax returns have a new line on Schedule I to add back any Nebraska income, sales and use taxes that were deducted on the Federal Form 1065 or Form 1120S under IRC § 164. IRC § 164(a) provides that any tax paid or accrued in connection with the acquisition of property shall be

treated as part of the cost of the acquired property. Sales tax paid by a pass-through entity will generally be deducted under IRC §162 and not deducted under IRC § 164.

- Sales and use tax paid on the purchase of business supplies is deducted as an ordinary trade or business expense under IRC §162 as part of the cost of business supplies.
- Sales and use tax paid on depreciable property is capitalized and depreciated as part of the cost of the asset under IRC §168.

Although Schedule I to Forms 1065N and 1120SN both call for the add-back of any Nebraska sales and use tax deducted on the Federal Form 1065 or 1120S under IRC § 164, it is expected that most pass-through entities do not deduct sales tax under IRC § 164.

9. The PTE election requires the payment of Nebraska tax on behalf of all partners/shareholders. There may be certain partners who are not otherwise subject to tax.
 - For example, there may be an Individual Retirement Account (“IRA”) partner. The Nebraska Department of Revenue intends to issue procedures for such a partner to claim the refund of the tax paid on the IRA’s behalf. An IRA should ensure the refund is deposited into an account owned by the IRA to prevent an unintended distribution from the IRA.

Retroactive Nebraska Pass-Through Entity Tax Elections:

1. The Nebraska statute provides for the option to make a retroactive pass-through entity tax election. The retroactive election can be made for the 2018-2022 tax years. Retroactive elections can be filed through December 30, 2025.
2. Eligible entities can pick and choose which years to file a retroactive election. An electing entity can choose to file a retroactive election for all five years at once, or they can choose to file for any combination of years. If a PTE files a retroactive election for one or more eligible years, the PTE can submit subsequent elections for the remaining years at any time through December 30, 2025.
3. The retroactive PTET election does not involve the filing of any amended tax returns for the pass-through entity or its partners/shareholders. The PTE will claim a deduction for retroactive elections in computing its federal taxable income for the taxable year in which the payments are made. The partners/shareholders will receive a Nebraska credit for the same year.
 - If a retroactive election for 2018-2022 is filed and paid in 2023, the partners/shareholders would receive a refundable Nebraska state income tax credit for 2023.
4. Taxpayers may want to consider spreading the retroactive election over 2023-2025.
 - Filing a retroactive election for all 5 years in 2023 may create a cash-flow issue for the PTE.
 - Filing a retroactive PTET election for all five years in 2023 may result in a very large Nebraska state income tax refund. There is some uncertainty about the taxability of the refund received in 2024.
5. There must be a Nebraska partnership or S corporation return on file with the Nebraska Department of Revenue for that year to be eligible to make the PTET election for that year.
 - Certain Nebraska partnerships and S corporations were not required to file a Nebraska entity return for 2018 if all partners/shareholders were Nebraska residents and all income was Nebraska sourced.
 - *If the entity did not previously file a Nebraska entity return, the entity form must be filed prior to making a retroactive claim for that year.*
6. Nonresident partners/shareholders will need to file a Nebraska nonresident tax return for the year of the retroactive election to obtain any refund attributable to that individual.

Other Notes:

- Treasury has not issued regulations on the deductibility of PTET payments yet. The IRS provided some guidance on the deduction in Notice 2020-75.
- There have been several Tax Advisor articles written regarding PTET and can be found here:
 - [Questions to consider before electing into a PTE tax \(thetaxadviser.com\)](https://www.thetaxadviser.com/questions-to-consider-before-electing-into-a-pte-tax/)
 - [Federal implications of passthrough entity tax elections \(thetaxadviser.com\)](https://www.thetaxadviser.com/federal-implications-of-passthrough-entity-tax-elections/)
 - [PTE deduction: Timing issues for accrual-method taxpayers \(thetaxadviser.com\)](https://www.thetaxadviser.com/pte-deduction-timing-issues-for-accrual-method-taxpayers/)
- The Nebraska Department of Revenue has released FAQs on their website, please see the link below:
 - [Pass-Through Entity Tax \(PTET\) FAQs](#)
- There may be circumstances in which a refund of Nebraska PTET received in a subsequent year will result in taxable income.
- Any deduction for pass-through entity tax could result in a reduction to the Qualified Business Income deduction.

Examples:

In the following examples assume the following facts about the taxpayer, unless noted otherwise:

- The taxpayer is a partnership with a December 31, 2023, year-end.
- The partnership is a cash-basis taxpayer
- All income is Nebraska-sourced.

Example 1

AB Partnership has two partners who each own a 50% interest in the partnership. In December 2023, AB projects they will have 2023 taxable income of \$100,000 before the deduction for Nebraska pass-through entity tax.

Example 1	AB partnership
AB 2023 projected income	100,000
2023 NE highest individual tax rate	6.64%
NE PTET to be paid by 12/31/2023	6,640
2023 projected income	100,000
Less: deduction for NE PTET	(6,640)
2023 projected Federal taxable income	93,360

Example 1.1

In March 2024, AB Partnership files its 2023 federal and state income tax returns. Actual taxable income before the deduction for Nebraska PTET was consistent with the projected taxable income.

Example 1.1	AB partnership	Partner A	Partner B	Sch K-1N Reporting
Federal Form 1065 Ordinary income	93,360	46,680	46,680	Line 1
Nebraska adjustment - add back NE PTET	6,640	3,320	3,320	Line 15
Nebraska Form 1065N Taxable income	100,000	50,000	50,000	
2023 Nebraska PTET credit	6,640	3,320	3,320	Line 23(f)

Example 1.2

In March 2024, AB files its 2023 Federal and state income tax returns. The actual taxable income is more than the projected 2023 taxable income. Accordingly, there is a balance due to Nebraska for the additional Nebraska PTET.

AB's 2023 deduction for Nebraska PTET on its Federal Form 1065 was \$6,640 based on the amount paid by December 31, 2023. The credit for tax paid to Nebraska on behalf of A and B for 2023 is tied to the amount that was deducted on the 2023 Federal tax return.

The additional balance due paid in March of 2024 will be treated as a Nebraska credit for A and B attributable to the 2024 tax year.

Summary of Example 1.2	AB partnership	Partner A	Partner B	Sch K-1N Reporting
AB 2023 taxable income (before deduction for NE PTET)	116,640			
2023 NE highest individual tax rate	6.64%			
Actual 2023 NE PTET	7,745			
NE PTET paid in December 2023	6,640			
NE PTET balance due in March 2024	1,105			
Federal ordinary income before deduction for NE PTET	116,640	58,320	58,320	
Less: deduction for NE PTET	(6,640)	(3,320)	(3,320)	
Federal Form 1065 Ordinary income	110,000	55,000	55,000	Line 1
Nebraska adjustment - add back NE PTET	6,640	3,320	3,320	Line 15
Nebraska Form 1065N taxable income	116,640	58,320	58,320	
2023 Nebraska PTET credit	6,640	3,320	3,320	Line 23(f)
2024 Nebraska PTET credit	1,105	552	552	2024 Ln 23

Example 2

CD Partnership has two partners who each own a 50% interest in the partnership. CD does not make the PTET election or make any PTET payments prior to December 31, 2023. Actual 2023 taxable income is \$100,000.

CD files a PTET election in March 2024 and pays the tax due on March 15, 2024.

Example 2	CD partnership	Partner C	Partner D	Sch K-1N Reporting
CD 2023 taxable income	100,000			
2023 NE highest individual tax rate	6.64%			
Actual NE PTET	6,640			
NE PTET paid in December 2023	-			
NE PTET balance due in March 2024	6,640			
Federal Form 1065 Ordinary income	100,000	50,000	50,000	Line 1
Nebraska adjustment - add back NE PTET	-	-	-	Line 15
Nebraska Form 1065N Ordinary income	100,000	50,000	50,000	
2023 Nebraska PTET credit	-	-	-	Line 23(f)
2024 Nebraska PTET credit	6,640	3,320	3,320	2024 Ln 23

Example 3

EFGH Partnership had four equal partners on January 1, 2022. On December 31, 2022, Partner E sold his ownership interest to Partner F.

EFGH had taxable income of \$100,000 for 2022. In 2023, EFGH had taxable loss of (\$13,160) before the deduction for 2022 Nebraska PTET.

EFGH makes a retroactive PTET election for the 2022 tax year and pays in \$6,840 with that election prior to December 31, 2023. EFGH does not make a PTET election for any other tax years at this time.

Example 3	EFGH partnership	Partner E	Partner F	Partner G	Partner H	Sch K-1N
EFGH 2022 taxable income	100,000					
2022 NE highest individual tax rate	6.84%					
Actual NE PTET	6,840					
NE PTET paid in December 2023	6,840					
2023 Federal taxable income	(13,160)	-	(6,580)	(3,290)	(3,290)	
Less: Deduction for NE PTET paid	(6,840)	-	(3,420)	(1,710)	(1,710)	
2023 Federal Form 1065 Ordinary income	(20,000)	-	(10,000)	(5,000)	(5,000)	Line 1
Nebraska adjustment - add back NE PTET	6,840	-	3,420	1,710	1,710	Line 15
Nebraska Form 1065N Ordinary income	(13,160)	-	(6,580)	(3,290)	(3,290)	
2023 Nebraska PTET credit for 2022 claim	6,840	-	3,420	1,710	1,710	Line 23(e)
2023 Nebraska PTET credit	-	-	-	-	-	Line 23(f)

Example 4

I Partnership had a net loss for 2023 and did not make a PTET election for 2023. Nebraska Statute 77-2769 provides that I Partnership will make 2024 estimated tax payments if the 2024 tax is reasonably estimated to be

\$400 or more. If the 2024 PTET was \$0, I Partnership is not able to rely on the prior year’s tax exception from underpayment penalties. (There were no accompanying forms provided for this example.)

Example 5

JK Partnership will make a retroactive election for 2018-2022. JK has two equal partners. All Nebraska PTET attributable to the retroactive claim will be paid by December 31, 2023:

JK will also make a 2023 PTET election and pay the Nebraska PTET by December 31, 2023, based on projected taxable income of \$100,000.

Example 5	Form 1065N Line 5	Tax rate	Tax
Partnership JK 2018	70,000		
Partnership JK 2019	60,000		
Partnership JK 2020	50,000		
Partnership JK 2021	80,000		
Partnership JK 2022	40,000		
Total retroactive years	300,000	6.84%	20,520
Partnership JK 2023 Projected income	100,000	6.64%	6,640
Total NE PTET paid by 12/31/23			27,160

Each of the partners will be allocated their share of the 2023 Nebraska PTET credits as follows:

Example 5.1	JK partnership	Partner J	Partner K	Sch K-1N Reporting
2023 Federal taxable income before deduction	100,000	-	-	
Deduction for NE PTET	(27,160)	-	-	
2023 Federal Form 1065 Ordinary income	72,840	36,420	36,420	Line 1
Nebraska adjustment - add back NE PTET	27,160	13,580	13,580	Line 15
Nebraska Form 1065N Taxable income	100,000	50,000	50,000	
2018 PTET	4,788	2,394	2,394	Line 23(a)
2019 PTET	4,104	2,052	2,052	Line 23(b)
2020 PTET	3,420	1,710	1,710	Line 23(c)
2021 PTET	5,472	2,736	2,736	Line 23(d)
2022 PTET	2,736	1,368	1,368	Line 23(e)
2023 PTET	6,640	3,320	3,320	Line 23(f)
Total 2023 NE PTET credit	27,160	13,580	13,580	

Disclaimer: These examples don’t take into consideration any change on QBI, self-employment tax, or any other changes in other taxes, etc.

This document has been prepared by CPAs who are members of the Nebraska Society of CPAs' PTET Working Group. Please be advised that this document has not been formally approved or endorsed as official guidance by the Nebraska Department of Revenue. The information contained herein is based on the PTET Working Group's understanding and interpretation of the law as of the date of this document and may be subject to change. It was prepared to assist members with examples on how the new forms interact with each other. While every effort has been made to ensure the accuracy and completeness of this information, the complexities of tax law mean that individual circumstances may vary. This document should not be used as a substitute for professional advice tailored to specific situations. We strongly recommend consulting with a qualified tax professional before making any decisions based on the information provided in this document. Neither the authors of this document nor their affiliated entities accept any liability for losses or damages arising from reliance on the content of this document. It is the responsibility of each individual or entity to seek appropriate professional advice and ensure compliance with all relevant tax laws and regulations.