

SJWT 2024

Hot Topics: Part 2

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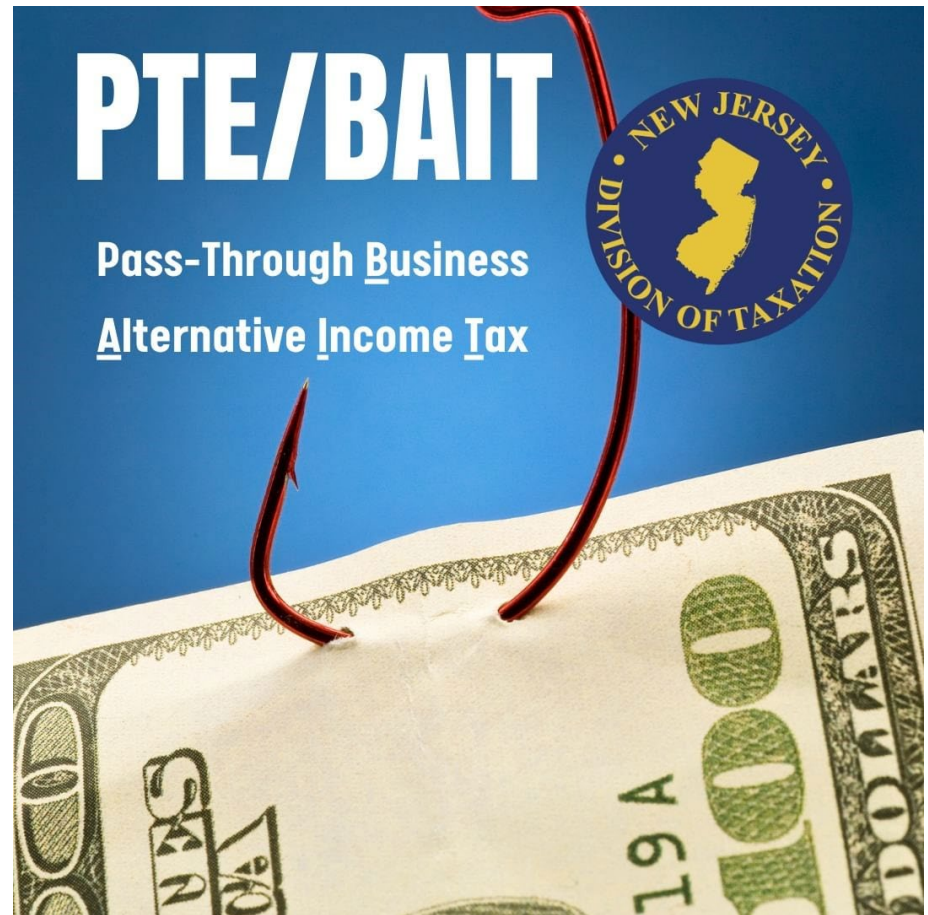


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BAIT/PTET

- What is it?
- Who can elect to do it?
- Why do it?
- How does it work?
- What states adopted it?
- Things to consider?



FEIE

- What is FEIE?
- Who qualifies?
- Why are we discussing this?



What is BAIT/PTET

- Income tax paid at the entity level instead of the personal level for passthrough entities



Who can elect the BAIT?

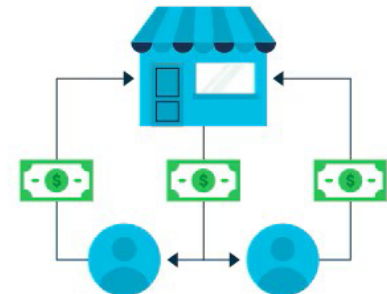
- Passthrough entities with at least one member:
 - S Corporations;
 - Partnerships; or
 - Limited Liability Companies

Pass-through entity

A business where all income flows through to the owner's tax return

Why is it important?

Business income is taxed at the owner's personal tax rate



Why do it?

- To save some money

Pass-Through Entity Tax Election Comparison

	- WITHOUT PTE	+ WITH PTE
State Taxable Income	1,000,000.00	1,000,000.00
		State PTE Tax 90,000.00
Itemized State Tax Deduction	10,000.00	10,000.00
Federal Taxable Income	990,000.00	900,000.00
Federal Tax	37%	37%
State Tax	9%	9%
Federal Tax Amount	366,300.00	333,000.00
State Tax Amount	90,000	90,000.00
Total Tax	456,300.00	423,000.00
		Total Savings \$33,300



How does it work?

- Make the election
- Pay the tax
- Lower federal taxable income

Pass-Through Entity Tax Election Comparison

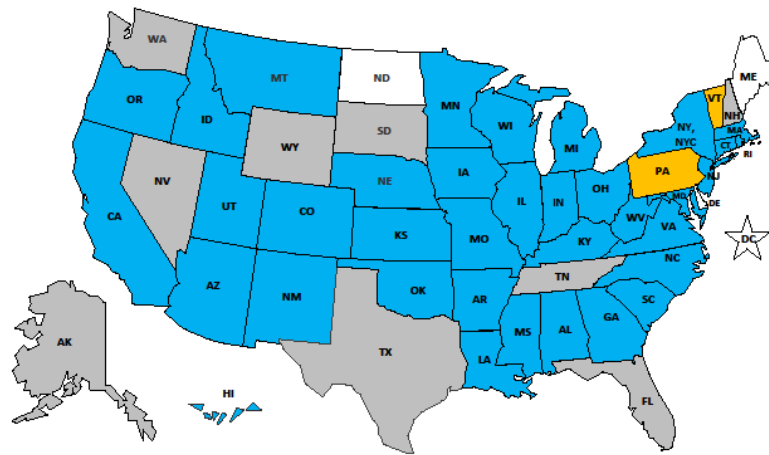
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Total Tax	456,300.00	423,000.00
Total Savings		\$33,300

What states adopted it

- Almost all states
- 3 states with pending legislation

States with Enacted or Proposed Pass-Through Entity (PTE) Level Tax

As of April 16, 2024



- 36 states (& 1 locality) that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:
[AL](#), [AR](#)¹, [AZ](#)¹, [CA](#), [CO](#)³, [CT](#)⁴, [HI](#)², [GA](#)¹, [IA](#)², [ID](#), [IL](#), [IN](#)², [KS](#)², [KY](#)¹ (& [KY](#)), [LA](#), [MA](#), [MI](#), [MD](#), [MN](#), [MO](#)², [MS](#)², [MT](#)², [NC](#)¹, [NE](#)³, [NJ](#), [NM](#)¹, [NY](#), [OH](#)¹, [OK](#), [OR](#)¹, [RI](#), [SC](#), [UT](#)¹, [VA](#), [WI](#), [WV](#)¹, and [NYC](#)¹
- 2 states with proposed PTE tax bills:
 PA – [SB 659](#) in Senate committee; [HR 1584](#) in House committee
 VT – [S.45](#) passed Senate, in House committee; [H.61](#) in House committee
- 9 states with no owner-level personal income tax on PTE income:
 AK, FL, NH, NV, SD, TN, TX, WA, WY
- 4 states with an owner-level personal income tax on PTE income that have not yet proposed or enacted PTE taxes:
 DC, DE, ME, and ND



What states adopted it

Current PTE tax workarounds (36 states and 1 locality)

State	Effective Year	State	Effective Year
Alabama	2021	Minnesota	2021
Arizona	2022	Mississippi	2022
Arkansas	2022	Missouri	2022
California	2021	Montana	2023
Colorado	2018 (retroactive)	Nebraska	2018 (retroactive)
Connecticut	2018 (mandatory 2018-2023, elective starting 2024)	New Jersey	2020
Georgia	2022	New Mexico	2022
Hawaii	2023	New York	2021
Idaho	2021	New York City	2022
Illinois	2021	North Carolina	2022
Indiana	2022 (retroactive)	Ohio	2022
Iowa	2022 (retroactive)	Oklahoma	2019
Kansas	2022	Oregon	2022
Kentucky	2022 (retroactive)	Rhode Island	2019
Louisiana	2019	South Carolina	2021
Maryland	2020	Utah	2022
Massachusetts	2021	Virginia	2021
Michigan	2021	West Virginia	2022
		Wisconsin	2018

Things to consider:

- Is it a refundable credit
- Would it benefit the passthrough entity members?
- Penalties and interest





Discussion

- Is it ok to accrue it for cash taxpayers?



FEIE

- What is it? Who qualifies? Why are we discussing it?

Form 2555	Foreign Earned Income	OMB No. 1545-0074
Department of the Treasury Internal Revenue Service	Attach to Form 1040 or 1040-SR. Go to www.irs.gov/Form2555 for instructions and the latest information.	2023 Attachment Sequence No. 34
For Use by U.S. Citizens and Resident Aliens Only		
Name shown on Form 1040 or 1040-SR		Your social security number
Part I General Information		
1 Your foreign address (including country)		2 Your occupation
3 Employer's name		
4a Employer's U.S. address		
b Employer's foreign address		
5 Employer is (check any that apply): a <input type="checkbox"/> A foreign entity b <input type="checkbox"/> A U.S. company c <input type="checkbox"/> Self d <input type="checkbox"/> A foreign affiliate of a U.S. company e <input type="checkbox"/> Other (specify) _____		
6a If you previously filed Form 2555 or Form 2555-EZ, enter the last year you filed the form. _____		
b If you didn't previously file Form 2555 or Form 2555-EZ to claim either of the exclusions, check here <input type="checkbox"/> and go to line 7.		
c Have you ever revoked either of the exclusions? <input type="checkbox"/> Yes <input type="checkbox"/> No		
d If you answered "Yes," enter the type of exclusion and the tax year for which the revocation was effective. _____		
7 Of what country are you a citizen/national? _____		
8a Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home? See Second foreign household in the instructions <input type="checkbox"/> Yes <input type="checkbox"/> No		
b If "Yes," enter city and country of the separate foreign residence. Also, enter the number of days during your tax year that you maintained a second household at that address. _____		
9 List your tax home(s) during your tax year and date(s) established. _____		

What is the FEIE?

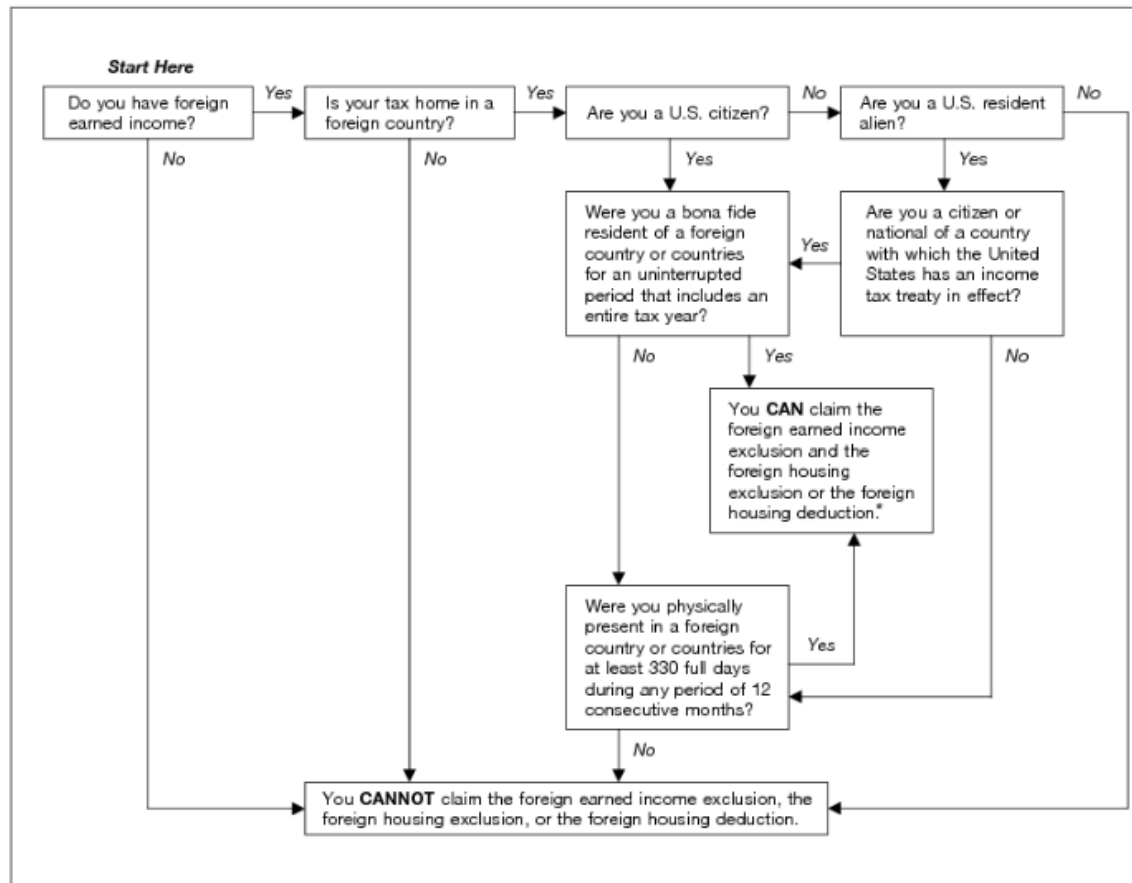
- 120,000 for 2023 and \$126,500 for 2024



Who qualifies?

- U.S. Citizen or resident alien living in a foreign country subject to U.S. income tax laws
- Meet the tax home test
- Meet either the bona fide residence test, or the physical presence test

Who qualifies?



* Foreign housing exclusion applies only to employees. Foreign housing deduction applies only to the self-employed.

Tax Home Test

- Is your tax home in a foreign country?



Bona Fide Residence Test

- To meet the Bona Fide Residence Test, a person must be a bona fide resident of a foreign country, or countries for an interrupted period that includes an entire tax year.
- To be a bona fide resident of a foreign country, you must show that you entered a foreign country intending to remain there for an indefinite, or prolonged period, and to that end, you are making your home in that country.

Physical Presence Test

- To meet this test, you must be a U.S. citizen or resident alien who is physically present in a foreign country, or countries for at least 330 full days during any period of 12 months in a row. A full day means the 24-hour period that starts at midnight.

Why are we discussing it?

- Sudden increase in taxpayers asking about it





Q & A

