



December 17, 2022

## Colorado PTE Election

In 2017 the Tax Cuts and Jobs Act placed a cap of \$10,000 on the amount of state and local taxes (SALT) an individual could deduct if they itemize on their 1040. This is commonly referred to as the SALT cap.

Pass-through entities (PTEs) may elect to pay and deduct Colorado state income tax at the partnership or S corporation level to avoid the SALT cap limitations at the individual level. The deduction is passed out to individuals as part of their net ordinary income or loss on the K-1 and is not a separately stated item. The PTE passes out a Colorado credit to individuals for the taxes paid.

This annual election is binding for all owners of the PTE except for C corporations that are unitary with the partnership. When the PTE makes this election, the PTE does not get to claim any IRC §199A deductions. Likewise, the PTE owners are required to addback any IRC §199A deductions claimed at the federal level related to an electing PTE.

For 2022, the election can be made by year end or with the tax return when filed. However, if the individual wants the deduction for their 2022 tax return, the tax needs to be paid before the end of the year. This rule applies whether the PTE is cash basis or accrual basis. The election is made with Form DR1705; please note 2022 is the only year to which this form is applicable.

For 2023, estimates will need to be made by the PTE if it is planning to make this election for 2023. If no estimates are paid, underpayment penalties may apply if the tax liability exceeds \$5,000. Estimates are paid by check with Form DR0106EP or electronically at [Colorado.gov/RevenueOnline](https://colorado.gov/RevenueOnline) or [tax.colorado.gov/electronic-funds-transfer](https://tax.colorado.gov/electronic-funds-transfer).

Colorado also allows this election to be made retroactively to 2018-2021. This election is only available to be made September 1, 2023 through June 30, 2024. It will be made by filing an amended composite return for each selected year. If this election is made retroactively, the tax due for these years will need to be paid at that time. The PTE tax rate is the corporate income tax rate applicable to each particular year. There will be no late filing interest or penalties related to these retroactive elections. Forms to make these elections will be released in the fall of 2023.