

# S.8115 (Skoufis)/A.8451 (Paulin)

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<b>BILL</b> S.8115 (Skoufis)/A.8451 (Paulin)
<b>SUBJECT</b> Pass Through Entity Tax Election Date
<b>DATE</b> January 05, 2024
<b>SUPPORT</b>

The Business Council supports this legislation that would modify the date by which an eligible taxpayer may make an election to be taxed under the pass-through entity tax (PTET) at both the state and New York City level.

This bill would amend the Tax Law to allow a taxpayer to make the PTET election by September 15 of the tax year to which the election applies. Current law requires the election to be made by March 15 of the tax year. As of November 2023, thirty-six states, including New York, have adopted a PTET, and a significant majority of those states allow this election to be made with the filing of their tax returns (typically March 15 or April 15 following the end of the applicable tax year) or have no limitation on their election date. Our research shows that only three other states follow New York's approach to require elections to be on March 15 of the tax year to which the election applies. (Note, the FY 2023 state budget allowed for an extended election period for the 2022 tax year, until February 15, 2023, to accommodate taxpayers impacted by a technical amendment to the PTET law, illustrating the state's ability to accommodate later elections.)

The PTET was adopted at the state level in 2021 and for New York City in 2022, for the purpose of restoring the federal deductibility of state taxes on business income paid under the personal income tax, such as for Sub-S corporations, partnerships and LLCs. Since then, this program has benefitted nearly 100,000 mostly small unincorporated businesses.

In extending the election date for the PTET election, this legislation will better fulfill the legislative intent of making the PTET mechanism available to eligible New York businesses. This will allow existing taxpayers more time to assess the impact of the election, and allow unincorporated businesses created after March 15 of a tax year to take advantage of the PTET program for that year.

Specifically, this bill modifies the Tax Law to change the date for making the PTET election from March 15 to September 15 applicable to tax years beginning on or after January 1, 2024. It also modifies the Tax Law to require that if a

taxpayer makes this election on or after March 15, the taxpayer is required to make the same estimated payments as if they made an earlier election, assuring no loss of revenues to the state.

Importantly, both the state and city PTET are designed to be revenue neutral to New York State and New York City (and in fact the PTET should result in some net increase in tax revenues for both jurisdictions, based on how the tax and offsetting credits are structured), although they can result in the shift of revenues from one fiscal year to another.

This limited amendment to the statute gives taxpayers more time to assess and make this annual election and provides access to the program to businesses created after March 15 of a given tax year. It is a useful technical correction to a valuable tax reform that will benefit unincorporated New York businesses. The Business Council strongly supports its adoption.

**Background** - The federal Tax Cut and Jobs Act of 2017 (TCJA) included a number of major tax reductions, including lowering the federal personal and corporate income tax rates, but also included a number of revenue raisers, among them the \$10,000 cap on the personal income tax deduction for state and local taxes – the “SALT cap.” Intended or not, the SALT cap impacts federal taxation of many businesses, especially smaller, non-incorporated businesses. In most states, including New York, unincorporated businesses – partnerships, S-corporations and LLCs, commonly referred to as “pass through entities” – do not pay entity-level income taxes. Instead, their business income is taxed under the personal income tax once the entity’s income is distributed or attributed (i.e., “passed through”) to its partners or shareholders. At the individual level, the state personal income taxes levied on this business income are subject to the federal SALT deduction cap. In 2018, Connecticut became the first state to adopt a “pass through entity tax” on unincorporated businesses, along with an offsetting personal income tax credit, as a workaround for the SALT cap’s impact on business income. Since then, 36 states have followed suit, with three states still considering legislation (while nine other states do not impose owner-level personal income taxes on PTE income, making this a non-issue in those jurisdictions). While their structures vary, these state laws were all intended to achieve the same goal of restoring federal deductibility for the business income of pass through entities. The state PTET was adopted in 2021, and the New York City version in 2022. Importantly, in November 2020 the IRS issued its Notice 2020-75, which effectively validated these types of state and local tax workaround deductions for individual owners of pass-through entities.