

Virginia
Elective Pass-Through Entity Tax
2021 Form 502PTET Package

Includes Form 502PTET and Instructions

**Form 502PTET and associated schedules must be
filed electronically**

*This package is provided for informational use only.
See the instructions for information about electronic filing.*

Instructions for 2021 Virginia Form 502PTET Pass-Through Entity Elective Income Tax Form

Important: Form 502PTET for Tax Year 2021 and payments must be submitted electronically using the Department's free Business Online Services. Go to tax.virginia.gov, click on the "Log In" button, and then click the "Business Account" button to enroll or register.

- The PTE must enroll in Business iFile in order to file.
- Tax preparers must register, create a unique ID number, and provide this number to their PTE clients so that the PTE client can set the preparer up as a user in the PTE's iFile account.

As explained in these instructions, the retroactive 2021 PTET credit is reported solely on a 2023 owner return. As a result, you may wish to consult the IRS and/or a federal tax professional regarding the impact, if any, of making a retroactive election on the PTE's federal return and the PTE owners' federal returns.

Background

Under legislation enacted by the 2022 General Assembly, Virginia established a new elective pass-through entity (PTE) tax for Taxable Years 2021-2025. Additional legislation enacted in 2023 expanded PTET eligibility by removing the requirement that a PTE must be 100% owned by natural persons or persons eligible to be shareholders of an S corporation in order to make the PTET election for Taxable Years 2021-2025. The elective PTE tax only applies to the pro rata or distributive share of income, gain, loss, or deduction attributable to eligible owners. The instructions that follow provide guidance for submitting forms and payments for the Taxable Year 2021.

General Information

For taxable years beginning on and after January 1, 2021, but before January 1, 2026, a pass-through entity may make an annual election to pay an elective income tax at a rate of 5.75%, provided that the pass-through entity's taxable income is adjusted to eliminate any federal deduction for state and local income taxes. The elective PTE tax is only applicable to the pro rata or distributive share of income, gain, loss, or deduction attributable to eligible owners.

An eligible owner may claim a corresponding refundable individual and fiduciary income tax credit for Taxable Years 2021 through 2025 for any amount of income tax paid by a PTE if the PTE makes the election and pays the elective income tax imposed at the entity level. The elective income tax and corresponding refundable credit allow the PTE to shift the income tax burden from the eligible PTE owners to the PTE itself.

Contact Customer Service: write to **Department of Taxation, P.O. Box 1115, Richmond, Virginia 23218-1115**, call **(804) 367-8037**, fax **(804) 254-6111**, or send a secure message via your Online Services for Businesses account.

Refer to the Department's website at www.tax.virginia.gov for additional information, including the Virginia Pass-Through Elective Income Tax Guidelines and Virginia Tax Bulletins 22-6 and 23-3.

Definitions

The following words and terms have the following meanings unless the context clearly indicates otherwise.

Electing pass-through entity (Electing PTE) – a PTE that has made the election to pay the elective pass-through entity tax levied pursuant to *Va. Code* § 58.1-390.3. Note: This may include PTEs that do not conduct business in Virginia or have Virginia source income and are electing to pay on behalf of Virginia resident owners.

Eligible owner – a direct owner of a pass-through entity who is a natural person subject to the tax imposed by Article 2 (§ 58.1-320 et seq.) or an estate or trust subject to the tax imposed by Article 6 (§ 58.1-360 et seq.).

Owner – any individual or entity who is treated as a partner, member, or shareholder of a pass-through entity for federal income tax purposes.

Pass-through entity (PTE) – any entity, including a limited partnership, a limited liability partnership, a general partnership, a limited liability company, a professional limited liability company, a business trust, or a Subchapter S corporation, that is recognized as a separate entity for federal income tax purposes, in which the partners, members, or shareholders report their share of the income, gains, losses, deductions, and credits from the entity on their federal income tax returns or make the election and pay the tax levied pursuant to *Va. Code* § 58.1-390.3.

Pass-through entity elective tax – a tax at the rate of 5.75% imposed on the pro rata or distributive share of each item of income, gain, loss, or deduction attributable to eligible owners. The Virginia taxable income is calculated pursuant to *Va. Code* § 58.1-391 for each pass-through entity that makes an election to pay the tax at the entity level for the taxable year. Taxpayers must follow the requirements and procedures established by the Virginia Department of Taxation for taxable years beginning on and after January 1, 2021, but before January 1, 2026.

Pass-through entity elective tax credit – the amount of tax paid by the PTE at the entity level that is passed through to the eligible individual and fiduciary owners to claim on their respective income tax returns as a refundable income tax credit.

Making the Taxable Year 2021 Retroactive Election

A Taxable Year 2021 PTET election must be made by September 16, 2024. Such election is valid only if the full amount of PTET owed is paid no later than the time at which the PTE files its Taxable Year 2021 Form 502PTET, provided that it files its Taxable Year 2021 Form 502PTET by September 16, 2024. After the PTE has timely filed its return accompanied with full payment of any PTET owed, the Department will allow eligible owners to claim any applicable credit on their income tax returns. Eligible owners must claim the credit on their 2023 income tax returns as a Retroactive 2021 PTET credit.

An electing PTE must refer to their previously filed 2021 Form 502 to complete the 2021 502PTET return. If an electing PTE has not previously filed 2021 Form 502, and was required to do so, they may be subject to the \$1,200 late filing penalty; however they are still eligible for the 2021 PTET election. If a PTE previously filed a TY 2021 composite return and now wants to file a TY 2021 PTET return retroactively, the PTE must report a subtraction on the PTET return for any taxable income reported on the composite return.

For Taxable Year 2021, a pass-through entity has the option to make the election and pay PTET for the taxable year by:

- Submitting Form 502PTET, including all owner credit allocation information, using Business Online Services on or before September 16, 2024.
- Making all payments electronically on or before September 16, 2024.

Taxable Year 2021 Form 502PTET will not be accepted after September 16, 2024, or without full payment at the time of filing.

Once Form 502PTET is filed, the election is binding for that taxable year. Each electing PTE must obtain consent from its eligible owners. Eligible owners do not have the option to opt out of an entity's election with the Department.

Filing Information

How to File and Pay

For Taxable Year 2021, Form 502PTET and all associated schedules must be filed through the Department's Online Services for Businesses. Paper submissions are not allowed. Waivers of the electronic filing requirement will not be granted.

All payments must be made electronically. Electronic payments can be made when the Form 502PTET return is filed through the Department's Online Services for Businesses. Electronic payments can also be made through eForms using Form PTET-PMT at www.tax.virginia.gov or through an ACH credit transaction initiated by your bank.

Visit the Department's website, www.tax.virginia.gov, for more information.

Due Date

Form 502PTET return must be submitted on or before September 16, 2024 and must be accompanied by full payment of any PTET due. Form 502PTET will not be accepted after September 16, 2024.

Note: There are no extensions or late filing options.

Penalties and Interest

Penalty for Fraudulent Returns

Civil and criminal penalties may be imposed for filing a fraudulent return. The criminal penalty for filing a fraudulent return is a Class 6 felony (*Va. Code* §§ 58.1-451 and 58.1-452).

Penalty for Returned Check or EFT Nonpayment

If your bank does not honor your payment to the Department, the Department may impose a penalty of \$35, as authorized by *Va. Code* § 2.2-614.1. This penalty will be assessed in addition to other penalties due.

Interest

Interest on the unpaid balance of any tax and penalty is charged at the underpayment rate established by IRC § 6621, plus 2%, from the original due date until paid.

Form 502PTET Submissions

Form 502PTET

An electing PTE must file Form 502PTET to compute the Virginia income tax at the entity level. The checkbox on Form 502PTET, Page 1 must be marked in order to confirm the election and certify the consent of eligible owners. Once Form 502PTET is filed, the election is binding for that taxable year. See the line instructions for completing the Form 502PTET in the next section.

VK-1 information for the Retroactive Pass-Through Entity Tax Payment Credit Amounts Passed Though to Each Eligible Owner

- Report the amount of credit that is distributed to each eligible owner, including owner name, address, SSN/FEIN, and entity type
- The total amount of credits allocated to eligible owners must equal the amount of tax computed on Line 7 of the return minus any withholding tax credit amount claimed on Line 10c.

Note: Ensure that the owner FEIN/SSN and entity type listed on these records matches the type of return filed by the owner. For grantor trusts where no Form 770 is being filed, enter "RES" if the owner will file an individual Form 760 or Form 760PY return and "NON" if the owner will file an individual Form 763 return. For all other grantor trusts, enter "TE." The credit can only be claimed by direct owners of the PTE. A credit that is allocated to an estate or trust cannot be subsequently allocated to the beneficiaries.

PTE Must Provide Owners with Instructions for Claiming the Retroactive PTET Credit

The Retroactive PTE Elective Tax Payment Credit for Taxable Year 2021 is claimed by eligible owners on **their Taxable Year 2023 returns**. The PTE must provide a statement to each eligible owner that includes the eligible owner's share of the retroactive credit and the following instructions for claiming the credit on their Taxable Year 2023 returns.

- Individuals filing Form 760, 760PY, or 763 claim the retroactive credit on their Taxable Year 2023 Schedule CR (Section 3, Line 6B).
- Estates and Trusts filing Form 770 claim the retroactive credit on the Taxable Year 2023 Form 770 (Line 5v).

Reminder: Do not amend Taxable Year 2021 PTE returns or Taxable Year 2021 owner returns in order to make this election or to claim the PTET credit.

Form 502PTET Instructions

Election Checkboxes

- Mark the first box at the top of the form to certify the consent of eligible owners and election to pay Virginia income tax at the entity level for the taxable year.
- Mark the second box if the electing PTE does not conduct business in Virginia or have Virginia source income.

Number and Types of Direct Owners

Line a – Number of Individual and Fiduciary Nonresident Eligible Owners

Enter the total number of eligible owners that are not residents of Virginia. If the residency status is not known, enter the number of eligible owners whose address of record is not in Virginia.

Line b – Number of Individual and Fiduciary Resident Eligible Owners

Enter the total number of eligible owners that are residents of Virginia.

Note: Lines 1-13 are based on the entire pass-through entity. See the [Form 502 Instructions](#) for guidance.

All fields below are based on the eligible owners only. Any lines not mentioned below are self-explanatory

Section I – Income Attributable to Eligible Owners

Enter amounts in the appropriate column for eligible nonresident owners (Column A) and eligible resident owners (Column B). Virginia taxable income is the aggregate of each eligible owner's income from the PTE adjusted by any Virginia modifications. Only the pro rata or distributive share of income, gain, loss, or deduction attributable to eligible owners is subject to the pass-through entity tax. Virginia nonresident eligible owners are subject to tax on the pro rata or distributive share of the Virginia taxable PTE income and Virginia modifications.

Line 1 – Eligible Owners' Shares of Taxable Income

Compute the eligible owners' shares of taxable income, including amounts from the 'Income' and 'Deductions' sections of the PTE's Schedule K (Form 1065 or Form 1120-S) as applicable for eligible Virginia resident and eligible nonresident owners. As a result, taxpayers should generally refer to the [Form 502 Instructions](#) for guidance in determining the eligible owners' shares of taxable income. However, unlike the computation of the nonresident withholding tax on Form 502, separately stated items of deduction are included when calculating each eligible owner's share of the PTE's taxable income on this form. For the purposes of the PTET, any separately stated item of deduction that is subject to a federal limitation, such as the deduction for charitable contributions and the Section 179 deduction, is limited to what is allowed under federal law for a C corporation.

Line 2 – Eligible Owners' Shares of Additions

Enter the total amount of additions attributable to PTE eligible owners.

Line 4 – Eligible Owners' Shares of Subtractions

Enter the total amount of subtractions attributable to PTE eligible owners. Subtract the taxable income reported on the Taxable Year 2021 Form 765 (composite return) if the PTE previously filed a composite return for Taxable Year 2021.

Line 5 – Virginia Taxable Income

Subtract Line 4 from Line 3 and enter here. If Line 4 is greater than Line 3, enter zero.

Section II – Tax Calculation

Line 7 – Pass-Through Entity Tax Calculation

Multiply the Virginia taxable income on Line 6 by the 5.75% tax rate. The amount of PTE elective tax credit that will be passed through to an electing PTE's eligible individual and fiduciary owners is equal to this amount minus any withholding credit reported on Line 10(c).

Important: Although not included on Line 7, any payments made with a composite return constitute PTET at the time the Taxable Year 2021 Form 502PTET return is filed. However, owners of the PTET may not claim a PTE elective tax credit for composite return payments.

Section III – Payments and Credits

Line 9 – Extension Payment and Other PTET Payments

Enter the amount of any extension payment or other PTE tax payments made for the current taxable year.

Line 10 – Tax Credits

The PTE may directly claim the refundable Motion Picture Production Tax Credit and the Research and Development Tax Credit. Report the tax credits that are to be credited or refunded directly to the pass-through entity as follows:

- **Line 10(a).** If the PTE opts to claim the Motion Picture Production Tax Credit refunded at the entity level, enter the amount of credit authorized by the Virginia Film Office within the Virginia Tourism Authority in their certification letter.

- **Line 10(b).** If the PTE opts to claim the Research and Development Tax Credit at the entity level, enter the amount of credit available.
- **Line 10(c).** If nonresident withholding payments were made on a previously filed Form 502, the PTE should enter, on this line, the amount of any withholding payments previously paid on behalf of any eligible owners and reported on Schedule VK-1 to such owners.

Signature

An owner, officer, or employee of the PTE who is authorized to act on behalf of the PTE in tax matters must sign the PTET return. By signing the return, the signer is declaring that they are the authorized representative of the PTE. Because the PTET return must be filed electronically, the return must be signed using the electronic signature procedures established by the Department. See the Department's website for more information.

**2021 Virginia
Form 502PTET**

**Pass-Through Entity
Elective Income Tax Form**
RETROACTIVE 2021 PTET CREDIT
COMPUTATION



Important Note: Form 502PTET must be filed electronically through the Department's Business Online Services. No paper submissions will be accepted. See the instructions for information on filing procedures.

FISCAL or SHORT Year Filer: Beginning Date _____, 2021; Ending Date _____, 20____

Mark applicable boxes below:

- Check here to certify eligibility and election to pay Virginia income tax at the entity level for the taxable year. If this box is not checked, the election will be invalid (see instructions).
- Check here if the electing pass-through entity does not conduct business in Virginia or have Virginia source income.

Pass-Through Entity Information (See Form 502 Instructions)		
FEIN	Date of Formation	Entity Type (see instructions)
Entity Name	Date Operations Began in Virginia	NAICS Code
Number and Street	State or Country Where Incorporated or Organized	Description of Business Activity
City or Town, State, and ZIP Code		

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Number and Types of Owners

- a. Number of individual and fiduciary nonresident owners..... a.
- b. Number of individual and fiduciary resident owners..... b.

Section I – Income Attributable to Eligible Owners
(See Instructions for Completing These Lines)

	Column A Nonresident Owners	Column B Resident Owners
1. Eligible owners' shares of taxable income..... 1.	.00	.00
2. Eligible owners' shares of Virginia additions..... 2.	.00	.00
3. Add Lines 1 and 2..... 3.	.00	.00
4. Eligible owners' shares of Virginia subtractions..... 4.	.00	.00
5. Virginia taxable income. Subtract Line 4 from Line 3..... 5.	.00	.00

Section II – Tax Calculation

- 6. Total Virginia taxable income: Add Line 5, Columns A and B (if negative, enter zero)..... 6. .00
- 7. Pass-Through Entity Tax: Multiply Line 6 by 5.75%..... 7. .00

Section III – Payments and Credits

- 8. Reserved..... 8.
- 9. Extension payment and other payments (exclude withholding payments)..... 9. .00

10. Tax credits.	Credit Name	Amount
10a.	Motion Picture Production Tax Credit	.00
10b.	Refundable Research and Development Tax Credit	.00
10c.	Withholding previously reported to owners on Sch. VK-1	.00

- Add amounts on Lines 10a, 10b, and 10c and enter the total here..... 10. .00
- 11. Total payments and credits. Add Lines 9 and 10..... 11. .00

Section IV – Amount Due or Refund

- 12. Tax owed. If Line 7 is greater than 11, enter the difference..... 12. .00
- 13. Overpayment amount. If Line 11 is greater than 7, enter the difference..... 13. .00