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Staying Ahead of State & Local Taxation

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Agenda

- Current Opportunities: Tennessee Franchise Tax Refund Opportunity

- Pass-Through Entity 101 Course
 - › Managing Pass-Through Entity (PTE) Multi-Tier SALT Compliance
 - › PTE Withholding and Composite Filings
 - › Financial Reporting of SALT Payments

- Future Concerns: State Beneficial Ownership Information Reporting

Current Opportunities: Tennessee Franchise Tax Refund Opportunity



Tennessee Franchise Tax Refund Opportunity

- SB No. 2103 Significantly Changed TN Franchise Tax Computation
 - › Eliminates TN property measure for tax years ending on or after 01/01/2024
 - › Authorizes taxpayers to seek a refund for taxes paid due to TN property measure
- Refund Period Available
 - › Returns filed on or after January 1, 2021, covering a tax period ending on or after March 1, 2020
- **Must File Refund Claims Between May 15, 2024 – November 30, 2024**

Tennessee Franchise Tax Refund Opportunity

- Refund Procedures Follow Two-Step Process
 - › Amending Form FAE170 with changes to property reporting only
 - › Submit claim for refund of franchise tax paid on Property Measure Form
- Filing Completed Electronically Through State Website (recommended) or Paper Filing

Tennessee Franchise Tax Refund Opportunity

- 2023 Calendar Year and 2024 Fiscal Year
 - › Prepare returns as usual; include TN property measure
 - › If subject to tax due to TN property measure, may request a refund
- 2024 Calendar Year and 2025 Fiscal Year
 - › Prepare returns omitting TN property measure



Poll 1

Does your business own property in Tennessee where a tax refund opportunity may exist?

1. Yes, material in nature
2. Yes, but not material in nature
3. No
4. Unsure, property is located everywhere

Managing Pass-Through Entity (PTE) Multi-Tier SALT Compliance

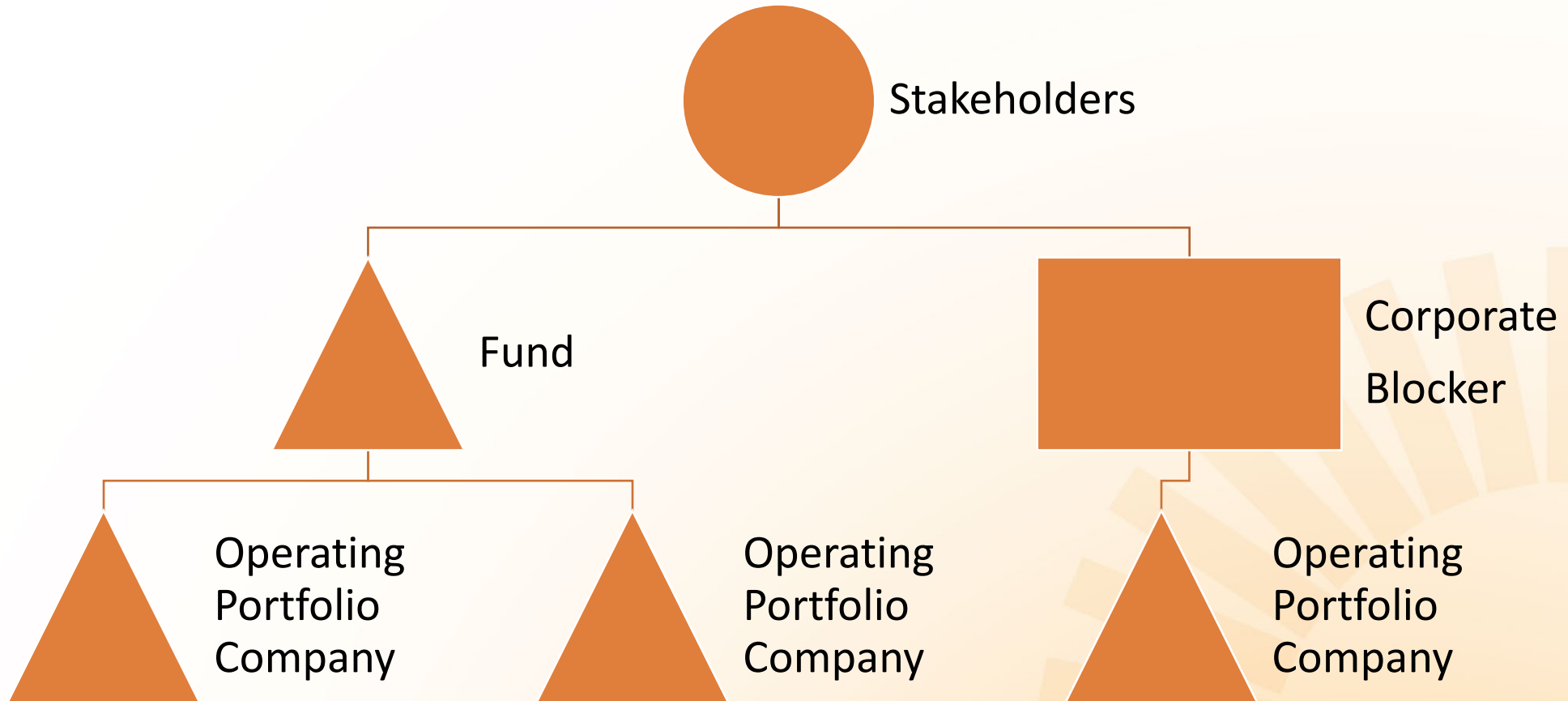


PTE Multi-Tier SALT Compliance – Overview

- What Does a PTE Multi-Tiered Structure Look Like?
 - › When a PTE investments in one or more PTEs
 - Investor = Upper Tier PTE
 - Investment = Lower Tier PTE

- Thorough Review of Facts to Determine Upper Tier PTE Filing Requirements
 - › What is being reported by the Lower Tier PTE?
 - › What is taking place at the Upper Tier PTE?
 - › What information is necessary for stakeholders to be compliant?

PTE Multi-Tier SALT Compliance – Structure Example



PTE Multi-Tier SALT Compliance – Where to File

- Questions to Consider
 - › What state Schedule K-1s have been received from Lower Tier PTE?
 - › What kind of income/loss is being received and deemed material?
 - › Any composite or withholding filings on the Upper Tier PTE's behalf?
 - › What residency filing obligations exist of the PTE due to stakeholder?
 - › What non-filing risks exist?

- **Ultimately, Management Discretion on Where to File**

PTE Multi-Tier SALT Compliance – Who Needs to Know

- Lower Tier PTE Decisions Impact Upper Tier PTE and Stakeholders

- Communication on Filing Footprint Impacts All Stakeholders:
 - › Annual compliance filing fees
 - › Estimated payment remittance (quarterly or annually)
 - › Extension filings and payment
 - › Filing determinations for stakeholders (composite or withholding needs)
 - › Payment categories between distributions or tax expenses

PTE Multi-Tier SALT Compliance – What To Look Out For

- Mandatory State Elections and Modifications
 - › Withholding and composite obligations, federal to state differences

- Tax Obligations Based on Something Other Than Income
 - › Gross receipts taxes, minimum fees, per partner fees, personal property taxes

- Unique Filing Requirements Could Lead to Unexpected Consequences
 - › CA tax basis reporting, IL qualified investment partnership, PTET opportunities, 8886 filing requirements

State Filing Requirements for Reportable Transactions

- Federal Form 8886 filings trigger certain state filing obligations
- Large penalties for failure to disclose: \$15,000 to \$200,000
- Generally, need to mark a box on the state form, attach a copy of the federal Form 8886 and/or send a copy of the federal Form 8886 to a separate mailing address with the state

Form 8886 (Rev. December 2019) Department of the Treasury Internal Revenue Service	Reportable Transaction Disclosure Statement ▶ Attach to your tax return. ▶ See separate instructions. ▶ Go to www.irs.gov/Form8886 for instructions and the latest information.	OMB No. 1545-1800 Attachment Sequence No. 137
Name(s) shown on return (individuals enter last name, first name, middle initial)		Identifying number
Number, street, and room or suite no.	City or town	State ZIP code
A If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 ▶ Statement number <input type="text"/> of <input type="text"/>		

PTE Withholding and Composite Filings



Withholding and Composite Returns

- State Tax Collection Mechanic for Nonresident Investors of PTE

- Filed by PTE on Behalf of Investors
 - › Can be mandatory or optional
 - › May eliminate state filing requirement of investors

- States **Do Not** Share Common Definition of Withholding and Composite
 - › Withholding generally requires a nonresident filing
 - › Composite generally covers the nonresident filing requirement
 - › **Both types considered distributions to the investors, not expenses of entity**

Withholding and Composite Returns

- Considerations for Withholding and Composite Returns
 - › Tax rates often imposed at highest rate with exclusion of certain deductions
 - › May not cover all stakeholders in the PTE
 - › Rates can differ by investor types
 - › *di minimus* thresholds may be available
 - › May require advanced permission from the state to file
 - › May require more than one nonresident to qualify to file

- **Generally, Investor Cannot Be Included in Composite If Have More Than One Source of Income to that State**

Withholding Discussions to Consider

- Discuss Withholding Approach to Avoid Potential Cash Outlays
 - › Risk of penalties and interest high as estimates often due quarterly
 - › Annually but especially during final year returns
- Composite Opt-In Letters Assist in Education and Filing Approach
- Upper Tier PTE May Waive Withholding
 - › Exemption certificates available in some states

Withholding Discussions to Consider

- Investor SALT Summaries for Withholding and Composite K-1 Package
 - › High-level view of income and payments on investor behalf
 - › General guidance on investor filing requirements
 - › Assists with potential credits computation
 - › Assists in eliminating frequent investor questions

- Internal SALT Summaries for Withholding and Composite Tracking
 - › Defining types of payments made (distributions or tax expense)
 - › Details which payments impacted each investor

Calendar of Considerations for Timing / PTET Treatment

Additional Complications

- Plan for Election Sooner Than Later
- Timing of Credit Alignment (MI and MD)
- Timing of Payment/Expense vs. Timing of Credit Receipt (good for 2020-75)
- Future Planning on Restricted Election Deadlines (NY, CA)
- Reduced Distributions for New Additional Taxes
- Disproportionate Distribution True Ups
- Operating Agreement Mandatory Distribution Complications
- Expense vs. Credit Allocation Issues (S Corporation or operating entity allocation)

Poll 2

How frequently do investors have questions regarding their SALT K-1s?

1. Often
2. Infrequently
3. Never

Financial Reporting of SALT Payments



Withholding and Composite Distributions

- Entity Level Payments on Behalf of Investors to Cover Their State Tax Liability
 - › Distribution from entity to investor
 - › Expense of investor (itemized deduction for individuals)
- Best Recorded as Prepaid Until Return Filed
 - › Avoids reconciling until amounts are known
- Frequently Will Not Be Pro Rata; May Require True Ups
 - › Tax rates and applicable withholding dependent on investor type

Withholding and Composite Distributions

- Journal Entry to Record Payment by PTE for Investors
 - › Debit: Prepaid investor SALT distribution
 - › Credit: Cash

- Journal Entry to Record When Returns Filed
 - › Debit: Investor SALT distribution
 - › Credit: Prepaid investor SALT distribution
 - › Difference: Cash if refund or balance due with filing

Withholding and Composite Distributions

- Journal Entry to Record Payment by PTE for PTE Investor
 - › Debit: Prepaid investor SALT distribution
 - › Credit: PTE investment

- Journal Entry to Record When Returns Filed
 - › Debit: Investor SALT distribution
 - › Credit: Prepaid investor SALT distribution
 - › Difference: Cash if refund or balance due with filing

State Tax Expenses

- Entity Level Payments That Are Liability of Entity
 - › Treated as an expense of the entity in the year incurred

- Two Categories of Expenses
 - › Based on income – tax imposed based on taxable income
 - › Not based on income – tax imposed based on something other than income

State Tax Expenses

- Journal Entry to Record State Tax Expenses
 - › Debit: Tax expense or prepaid tax expense
 - › Credit: Cash

- If Lower Tier PTE Makes Withholding Payment on Upper Tier's behalf, Can Occasionally Offset Tax Expenses
 - › Debit: Tax expense or prepaid tax expense
 - › Credit: PTE investment

Poll 3

Do you feel comfortable with recording withholding, composite and PTET payments?

1. Yes
2. No
3. Not Applicable

State PTET Expenses (Hybrid)

- State Pass-Through Entity Elections (PTET) Create Federal Deduction for Entity vs. Traditional Distribution Treatment for Investors
 - › Avoid \$10,000 cap on itemized deductions
 - › Primarily a tax federal benefit
- Under FASB ASC 740, PTET Payments for GAAP Purposes are Scrutinized
 - › Is the tax a transaction for the owners or entity?
 - › Is a credit offered to the investors?
 - › Could be either a distribution or tax expense of the entity for GAAP

State PTET Expenses (Hybrid)

Assuming PTET Creates Expense Under Tax Basis

- Journal Entry to Record PTET Payments
 - › Debit: Prepaid PTET tax expense
 - › Credit: Cash

- Journal Entry to Record PTET Filing
 - › Debit: PTET tax expense
 - › Credit: Prepaid PTET tax expense
 - › Difference: Cash if refund or balance due with filing

State PTET Expenses (Hybrid)

Assuming PTET Creates Distribution Under GAAP

- Journal Entry to Record PTET Payments
 - › Debit: Prepaid investor PTET distribution
 - › Credit: Cash

- Journal Entry to Record PTET Filing
 - › Debit: Investor PTET distribution
 - › Credit: Prepaid investor PTET distribution
 - › Difference: Cash if refund or balance due with filing

- When Return is Filed, Record Book-to-Tax Adjustment to Convert GAAP Distributions to Tax Expenses

Future Concerns: State Beneficial Ownership Information Reporting



Poll 4

Will you be impacted by the Beneficial Ownership Information Reporting Requirements?

1. Yes, Federal and State
2. Yes, Federal Only
3. No
4. Unsure

New York Beneficial Ownership Information (BOI)

- Annual Filings for LLCs Formed or Registered with NY Regarding Beneficial Owners
 - › Both exempt and non-exempt LLCs
- Beneficial Owners:
 - › Own or control at least 25% of the LLC; and/or
 - › Exercise substantial control over the LLC (ex. CEO, COO, general counsel)
- General Information to Report
 - › Full legal name, DOB, home or business address, ID number from driver's license or passport
- Non-Compliance Can Be Subject to Penalties

New York Beneficial Ownership Information (BOI)

Federal vs. New York BOI Requirements

	Federal CTA	NYLTA
Applies to LLCs	Yes	Yes
Applies to corporations and other entities	Yes	No
Exempts certain entities from reporting	Yes	Yes
Requires exempt entities to remit a Statement of Exemption	No	Yes
Intends to publicly display the names of beneficial owners through a searchable public database	No	No
Requires the reporting of company applicants (the individual who directly files the document that first registers the reporting company, and the individual that is primarily responsible for controlling the filing.)	Yes	No

New York Beneficial Ownership Information (BOI)

State Deadlines

Date of LLC Formation/ Authorization to Do Business in NY	NY BOI / NY Statement of Exemption Due Dates
Before January 1, 2026	December 1, 2026
On or after January 1, 2026	30 days from the date of formation or registration

Similar to federal BOI requirements, New York requires an LLC to file an amendment when any changes in reported information occur.

State Beneficial Ownership Information Reporting

■ Mandatory States

- › New York – revised version of LLC Transparency Law
- › District of Columbia – Secs. 29-102.01 & 29-102.11
 - [The Federal Corporate Transparency Act & Beneficial Ownership Reporting | dlcp \(dc.gov\)](#)
 - [Biennial Report BRA-25](#)

■ Proposed States

- › California – Senate Bill 1201, introduced February 15, 2024
- › Massachusetts – House Bill 3566, introduced March 30, 2023
- › Maryland – Senate Bill 954, introduced February 2, 2024

Learn More About BOI from Our Team

- **Summer CPE Webinar, August 21:** *What You Should Know – Now – About Beneficial Ownership Information Reporting*
- **BOI Reporting Resource Center:** *cohencpa.com/beneficial-ownership-information-reporting-resource-center*

Questions?



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