

## Updated Temporary Guidance for Electing Pass-Through Entities under Act 2021-1 and House Bill 588 (Updated May 14, 2021)

On Feb. 12, Governor Kay Ivey signed into law the Alabama Electing Pass-Through Entity Tax Act ([Act 2021-1](#)) which, beginning with the 2021 tax year, allows Alabama S-Corporations and Subchapter K entities (pass-through entities or PTEs) to elect to pay Alabama income tax at the entity level. Entities making this election (Electing PTEs) must notify ALDOR at any time during the tax year but no later than the 15<sup>th</sup> day of the third month following the close of that tax year for which the entity elects to be taxed as an Electing PTE. Entities making this election for the 2021 tax year, were required to begin making estimated payments on April 15, 2021.

### *Estimated Payments for Electing PTEs*

The following temporary guidance is intended to help Electing PTEs determine whether, when, and how estimated payments should be made. Additional guidance regarding the election process, returns, and related matters will be issued prior to the 2021 filing season.

1. Under what circumstance will estimated payments be due for the 2021 tax year?  
If a PTE anticipates making the election for tax year 2021 and its estimated Alabama tax liability is expected to be \$500 or more, the PTE will be required to make estimated tax payments.
2. What are the due dates for estimated tax payments for the 2021 tax year?  
**Estimate tax due dates for calendar year filers:**  
Payment 1 – April 15, 2021  
Payment 2 – June 15, 2021  
Payment 3 – September 15, 2021  
Payment 4 – December 15, 2021  
  
**Estimate tax due dates for fiscal year filers:**  
Will be due on the fifteenth day of the fourth, sixth, ninth, and twelfth months of the fiscal year.
3. How do I calculate the amount of estimated quarterly tax payments due for the 2021 tax year?  
The required estimated quarterly payments will be 25% of the “required annual payment.” The required annual payment generally means the lesser of 100 percent of the tax shown on the return for the taxable year or 100 percent of the tax shown on the return for the preceding tax year. This safe-harbor rule will apply to Electing PTEs making estimated payments for the 2021 tax year using the following calculations for the required annual payment:  
  
**PTEs (other than S-corps):** Calculate the total of lines 1 through 17 in the Alabama column on Schedule K from the PTEs 2020 Form 65; then multiply this total by 5%.  
**S-Corps:** Calculate the total of lines 1 through 17 in the Alabama column on Schedule K from the S-Corp’s 2020 Form 20S; then multiply this total by 5%.
4. How can I pay the Electing PTE’s estimated tax installments?  
Estimated tax payments may be made by check if the quarterly amounts are less than \$750.00. Payments by check should be submitted with the form [PTE-V](#) and mailed to the address provided on this form.

Electronic payments can be made via ACH draft through My Alabama Taxes ([MAT](#)) and do not require the form PTE-V. Once logged into MAT, navigate to **Accounts**, then to **Pass-Through**

**Entity**, click the **Filing Period Link**, and in the **I Want To** section, click the **Make a Payment** link.

*Please Note: Section 41-1-20, Code of Alabama 1975 requires all single tax payments of \$750 or more to be made electronically.*

5. What if a PTE makes estimated payments and ultimately does not make the election to be an Electing PTE for this tax year?  
A refund may be requested by the entity. To request a refund, use the form [PTE-C](#) and list the amount of estimate payments made on line 5b.

### **House Bill 588:**

House bill 588 was signed into law by Governor Ivey on May 14, 2021. The bill provides that members of an Electing PTE are required to report their share of the income from the Electing PTE and in turn will be entitled to a refundable credit in an amount equal to their pro rata or distributive share of the Alabama income tax paid by the electing pass-through entity. To the extent that the retroactive effect of these provisions may have resulted in Electing PTEs and their members underpaying or failing to make the estimated tax payment due on April 15, 2021, the bill authorizes the Department to waive any estimated tax penalties and interest associated with the underpayment.

The temporary guidance provided below is designed to address questions regarding the waiver of penalties authorized by HB588. The Department will issue more comprehensive guidance as needed on this subject ahead of the 2021 tax filing season, as well as guidance regarding the calculation of the credit for taxes paid by Electing PTEs, reporting of the credit by the entity and members, and related matters.

### ***Temporary Guidance for Waiver of Estimated Payment Penalties***

1. In General - If the underpayment is \$500 or less, no penalty will be incurred. If the underpayment is in excess of \$500, taxpayers subject to the penalty will be eligible for a waiver, if the underpayment is due to the retroactive effect of the reporting provisions of HB588. More detailed information is provided below for specific taxpayers seeking a waiver of the penalty.

*Note: Requests for waivers of penalties associated with estimated payments should be submitted at the time the taxpayer files its annual income tax or Financial Institution Excise Tax return using the forms identified below. The updated forms will be released in conjunction with the release of other forms for the 2021 filing season and will be available on the Department website at [www.revenue.alabama.gov](http://www.revenue.alabama.gov).*

2. Individuals - If the first quarter estimate was not made or was underpaid, no penalty will be incurred if the underpayment is made-up by the due date of the second quarter estimate payment. If the underpayment is not made-up by this time, the taxpayer should use the 2021 Form 2210 AL to calculate the penalty. The Form 2210 AL should be submitted with the 2021 individual income tax return. A penalty waiver may be requested by submitting the

Form PWR. The penalty waiver request should be mailed separately from the return to the address on the form.

3. Corporations - If the underpayment is in excess of \$500, the corporation will need to file Form 2220 AL and submit it with the applicable corporate income tax return form. A penalty waiver may be requested by submitting Form PWR. The penalty waiver request should be mailed separately from the return to the address on the form.

*Note: The Form 2220 AL contains a K1 exception checkbox that should be checked if the corporation's primary source of taxable income is from a K1. Corporations that meet the criteria for the K1 exception will not be required to compute a penalty, nor will they be billed a penalty.*

4. Financial Institutions - If the underpayment is in excess of \$500, the financial institution will need to file the 2022 Form 2220E with the applicable financial institution excise tax form. A penalty waiver may be requested by submitting the Form PWR. The penalty waiver request should be mailed separately from the return to the address on the form.
5. Electing Pass-Through Entities - If the underpayment is in excess of \$500, the electing pass-through entity will need to file the 2021 Form 2220 AL and submit it with the electing pass-through entity form. A penalty waiver may be requested by submitting the Form PWR. The penalty waiver request should be mailed separately from the return to the address on the form.