

PKF PERSPECTIVES

URGENT

ACTION REQUIRED BY SEPTEMBER 15, 2003

New York State Tax Law was amended for 2003 to require partnerships [including LLCs or LLPs that are treated as partnerships for federal income tax purposes] and New York S corporations, that have income derived from New York sources, to make estimated income tax payments on behalf of partners or shareholders that are C corporations or nonresident individuals. The first payments of estimated tax under this new law are due September 15, 2003.

Explanation of the Law

Under the amended law, pass-through entities described above must make estimated tax payments on behalf of their nonresident individual and corporate owners in four quarterly installments due on April 15, June 15, September 15 and January 15 of the succeeding year. **The payments must be made by these dates even though the entities or their owners file their tax returns on a fiscal year basis.**

For 2003, the first payment is due by September 15, 2003 and **must** include the estimated tax that would have been due for April 15 and June 15 of this year (relief is available for the first and second quarterly installment amounts if the entity receives written notification from the corporate owners or nonresident individual partners that they have already complied with the New York State estimated tax rules for these periods.)

Actions Required

- Partnerships, LLCs, LLPs and S Corporations must estimate their New York source income for 2003.
- Once determined, required estimated tax must be calculated for both corporate and nonresident individual owners based upon their distributive share of such income.
- The income so determined is then multiplied by the highest New York State rate for the owners. The highest corporate rate is currently 7.5 percent and the highest current individual rate is 7.7 percent.
- The resulting tax must be remitted with New Form CT-2658 for corporations and IT-2658 for individuals.

Example:

Partnership ABC has three partners (nonresident individual A, corporate partner B and New York State individual resident C) who each own one third of the partnership. Partnership ABC anticipates that it will have New York source taxable income of \$300,000 for 2003. Based upon the new law, estimated tax payments must be made for A and B by September 15, 2003 as follows:

	NR Individual Partner A	Corporate Partner B
Distributive share of New York State Source Taxable Income	\$100,000	\$100,000
Highest Tax Rate	7.7%	7.5%
Tax	\$7,700	\$7,500
Due by September at 75%	\$5,775	\$5,625

A partnership or S corporation may, instead, use actual distributive or pro rata income earned from New York sources for 2002. This calculation also requires applying the new tax rates of 7.7 percent or 7.5 percent.

Notification

Every entity which has paid an estimated tax on behalf of an owner must issue a statement to be furnished within 30 days of the payment to the owner. No specific form has been established for the notification process.

Related Penalties

If a partnership, LLC, LLP or S corporation is required to pay estimated tax and fails to do so, the entity will pay \$50 per partner or shareholder for each failure.



Underpayment of Estimated Tax Penalty

In addition to the \$50 per owner penalty, the entity will be required to add on to the tax due a penalty for underpayment of estimated tax as required. The required estimated tax payments for 2003 must equal or exceed the smaller of:

- a. 90 percent of the estimated tax required to be paid for 2003, **or**
- b. 100 - 110 percent of the estimated tax that would have been required to be paid on behalf of partners in 2002 had the law been in effect for 2002. For this calculation, 2003 tax rates must be applied.

How Can PKF Assist?

This new law is clearly a hardship to both the entities who must calculate and pay the estimated tax and the owners who are forced to take distributions to pay taxes possibly not otherwise owed. Our tax department is available to assist you in these calculations.

IN THE WORDS OF ...

I don't know a single foreign product that enters this country untaxed, except the answer to prayer.

... Mark Twain, humorist

The hardest thing in the world to understand is the income tax.

... Albert Einstein, scientist

The American compliance record stems from a combination of civic obligation, fear of audit, and confidence that everyone else on the block is chipping in. Remove any one of those, and you could quickly undermine the whole system.

... Fred Hiatt, editor
The Washington Post editorial page

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