

SALT Parity Act – Frequently Asked Questions

- 1) How does a pass-through entity make the election to be taxed at the entity level?

The S corporation or partnership will make the election on the K-120S return for the tax year in which the election is being made. The K-120S has a new Box N which pass-through entities will check to make the election.

- 2) How often does the pass-through entity make the election?

For tax years commencing on or after January 1, 2022, an S corporation or partnership may **annually elect** to be subject to tax at the entity level for the taxable period.

- 3) Are electing pass-through entities required to make Kansas estimated tax payments?

An electing pass-through entity shall be treated as a C corporation for the purposes of making estimated tax payments. While estimated tax payments are not required for the first taxable period for which the act is applicable (2022), they are required for subsequent tax periods (2023 and beyond).

- 4) How are estimated tax payments made?

The pass-through entity can make estimated tax payments with the filing of the K-120ES. Estimated tax payments can also be made online at ksrevenue.gov via the Kansas Tax Payment Portal which can be accessed through the 'Make a Tax Payment' link. Taxpayers that do not have an account will need to register and establish an account prior to making an estimated tax payment.

- 5) Should a pass-through entity make estimated tax payments prior to the end of 2022 so the estimated tax payments are deductible for federal tax purposes for 2022?

The deductibility of 2022 Kansas estimated tax payments for federal tax purposes cannot be addressed by the Kansas Department of Revenue, since this is a federal tax question. Practitioners should seek advice from the Internal Revenue Service, which may include IRS Notice 2020-75, and make that decision by exercising their own professional judgement in consultation with their pass-through entity clients.

- 6) What is the amount of tax to be paid by the electing pass-through entity?

The pass-through entity shall be subject to a tax in an amount equal to 5.7% of the sum of each resident electing pass-through entity owner's distributive share of the electing pass-through entity's income and each nonresident electing pass-through entity owner's distributive share of income attributable to the state.

- 7) If the pass-through entity makes an election, does it make tax payments on behalf of other partnerships and S corporations that are owners of the pass-through entity?

No. Partnerships and S corporation owners are not eligible members. Only individual owners can be taxed under the SALT Parity election.

For this discussion, we have S corporation A who is owned by Individual A (30% ownership), Partnership A (30% owner) and S Corporation B (40% owner). S Corporation A realized \$100,000 in income. Individual A and Partnership A's distributive shares of income were \$30,000 each. S corporation B's distributive share of income was \$40,000.

While the income is passed to each ownership entity, tax is paid only on behalf of Individual A. The tax paid on Individual's A behalf would be \$1,710. Partnership A and S Corporation B could each individually elect to be taxed at the entity level and pay the tax on their individual members' share of distributive income.

- 8) If state income tax is taken as a deduction on the federal tax return for the pass-through entity, is the tax deduction added back on the Kansas return?

Yes. K.S.A. 79-32,117(b)(ii) calls for the add back to federal adjusted gross income of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax.

- 9) Are guaranteed partnership payments included in determining the electing pass-through entity owner's share of distributive income.?

Yes, the K-120S starting point is Ordinary Income from the federal Schedule K. Line 2a is the total of all other income from federal Schedule K. Included in that amount reported in line 2a are items reported on line 4 of the federal Form 1065, Schedule K, which includes guaranteed partnership payments.

- 10) Can pass-through entities pay state income taxes on behalf of owners that are trusts?

Yes, trusts can participate in a SALT Parity election, if the trust files a Kansas K-40 or K-41 return.

- 11) If a trust files a Kansas K-41 tax return, can the tax paid by the pass-through entity on behalf of the trust pass down to the individual beneficiaries of the trust?

No, while the federal taxes paid by the trust may be reduced, the tax credit recognized by the trust on the Kansas K-41 cannot be passed down to the beneficiaries of the trust.

- 12) Can a pass-through entity pay the tax on behalf of a single member LLC who is an owner of the pass-through entity?

The response to this question is dependent upon how the single member LLC is recognized for federal income tax purposes. If the single member LLC is taxed as an individual on the federal return, then yes, the pass-through entity could pay the tax on the single member LLC's distributive share of income. If the single member LLC elects to be treated as a S corporation for federal purposes, then the single member LLC would be treated in the same manner as any other S corporation and is not an eligible owner for the SALT Parity election.

- 13) Can a single member LLC make the election to be taxed at the entity level?

Yes, if the single member LLC has elected to be treated as an S corporation for federal income tax purposes.

- 14) Can a partnership or S Corporation that only has portfolio income (interest, dividends, capital gains on securities, etc.) make the Kansas pass-through entity election and pay the Kansas tax on the portfolio income at the pass-through entity level?

Yes, the election could be made under the circumstances described above.

- 15) Can the election to be taxed at the pass-through entity level be changed with the filing of an amended return?

No, once the election is made, the election is irrevocable.

16) Does the K-9 need to be filed with the K-120S?

No, the K-9 needs to be completed for and distributed to each individual shareholder, partner, or trust for which tax was paid by the pass-through entity making the election. The K-9 reports each individual shareholder, partner, or trusts share of income, credits, and tax paid. The information provided on the K-9 duplicates the information provided in Part IV of the K-120S.

While the K-9 does not need to be filed with the K-120S, it does need to be attached to the K-40 or K-41 tax returns for individuals and trusts.

17) When exercising the SALT Parity election, credits attributable to the pass-through entity are required to be taken at the entity level. However, when reporting the amount of 'Credit for tax paid on the K-120S' (Line 26 on the K-40 and Line 16 on the K-41), taxpayers are instructed to use the net tax paid on the K-9 (Statement of Partnership or S Corporate Tax Paid) issued to the individual partner, individual shareholder, or trust. In following this practice, the benefit of the refundable and non-refundable tax credits taken on the K-120S are lost to individual partners, individual shareholders, and trusts when filing their respective returns. Is this the intended result of the legislation?

No, for tax year 2022, the amount of 'Credit for tax paid on the K-120S' (Line 26 on the K-40, and Line 16 on the K-41) is the amount of tax reported in the box entitled 'Kansas Tax @ 5.7%' found in Part C of the K-9. By following this methodology, the benefits of the tax credit will be realized by the individual partners, individual shareholders, and trust.

18) Can an electing pass-through that operates in multiple states pay the tax on the income from non-Kansas sources for resident individual partners, individual shareholders, and trusts.

Yes, the pass-through entity can pay tax on 100% of the income from both Kansas and non-Kansas sources for resident individual partners, individual shareholders, and trusts. Pass-through entity wishing to pay the tax on income from non-Kansas sources may complete the K-120S-IAW (Income Allocation Worksheet) in conjunction with the K-120S.