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# NYS Pass-Through Entity Tax

September 30, 2021

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Figure 1. Gartner Peer Insights "Voice of the Customer" Meeting Solutions Overall Ratings

Gartner Peer Insights "Voice of the Customer" Meeting Solutions Overall Ratings  
As of January 31, 2018

Eligible Vendors	Gartner Peer Insights Customers' Choice	Gartner Magic Quadrant Position	Number of Reviews	Overall Customer Rating
Zoom Video Communications	customer's choice 2018	Leader	n=686	4.69
Highfive Technologies			n=30	4.40
Lifesize			n=30	4.40
LogMeIn	customer's choice 2018	Challenger	n=163	4.36
Teamviewer			n=42	4.33
BlueJeans Network	customer's choice 2018	Visionary	n=57	4.32
Google	customer's choice 2018	Challenger	n=131	4.27
Cisco	customer's choice 2018	Leader	n=380	4.21
Microsoft		Leader	n=293	4.16
Adobe		Challenger	n=72	4.14

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# Presented By

Lisa F. Marou, CPA

Principal

Insero & Co. CPAs, LLP

# Agenda

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- Overview
- What Pass-Through Entities are eligible to make the election?
- Election and timing of payments
- Calculation of PTE Taxable Income and PTET
- Calculation of PTET credits
- Other considerations
- Steps to make the Pass-Through Entity Tax (PTET) Election
- Steps to create a new NYS online services account

# Overview

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- In April, NYS passed legislation creating a new Pass-Through Entity Tax (PTET)
- On Aug 25, NYS released TSB-M-21(1)C,(1)I which provides more information on the practical/filing aspects of this new law
- NYS workaround to the SALT limitation on personal returns
  - Federal business deduction for the tax paid
  - NYS credit and addition to income

# What Pass-Through Entities are eligible to make the election?

Any PTE that is

- (1) a partnership for federal and NYS purposes who has direct members who are taxable under Article 22, or
- (2) NYS S corporation subject to the fixed minimum tax



# Polling Question #1

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**WHAT IS YOUR CURRENT BUSINESS ENTITY TYPE?**

# Election

- Annual election made electronically on the NYSDTF website by an **authorized person**

If the entity is:	Authorized persons include:
a New York S corporation	any officer, manager, or shareholder of the New York S corporation who is authorized under the law of the state where the corporation is incorporated or under the S corporation's organizational documents to make the election and who represents to having that authorization under penalty of perjury.
a partnership	any member, partner, owner, or other individual with authority to bind the entity or sign returns under Tax Law § 653.

- For 2021, the election is due **October 15, 2021**
- For future years the election is due March 15 of each year
- The election is irrevocable (for the year it is made)
- Calendar-year basis

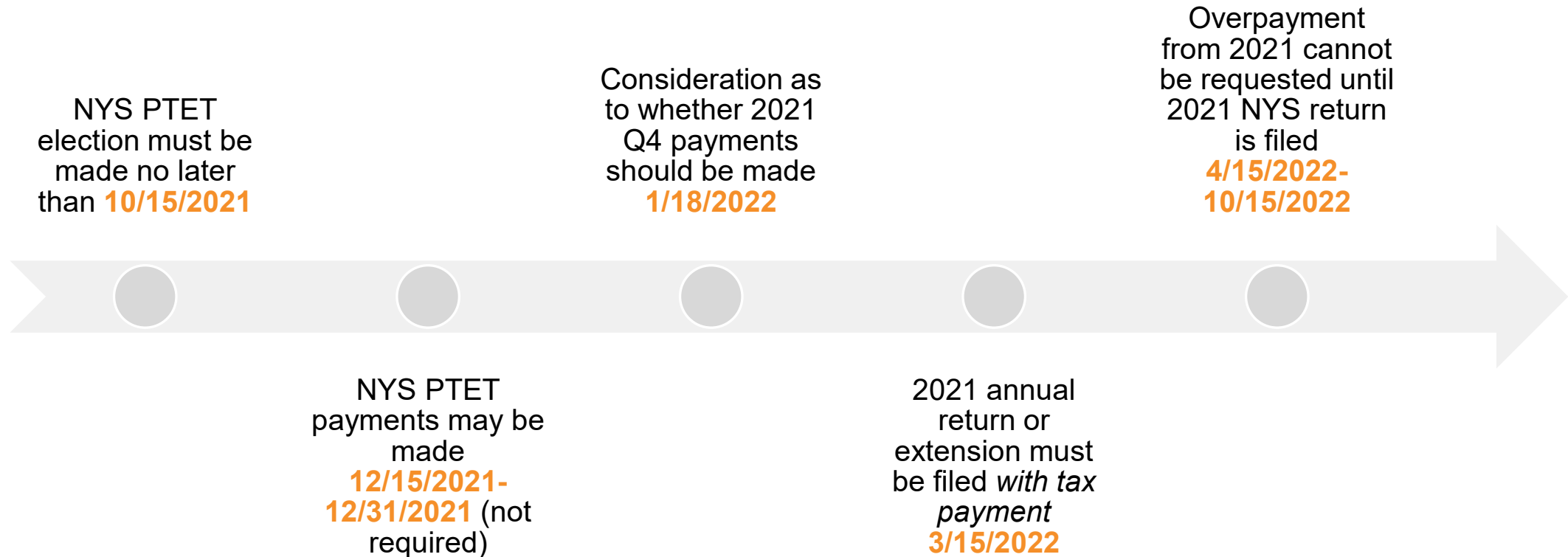


# Timing of Pass-Through Entity Tax (PTET) Payments

- Quarterly installment payments due 3/15, 6/15, 9/15, and 12/15
  - Required annual payment:
    - 90% of current year PTET, or
    - 100% of prior year PTET – if the election was made in the preceding year
- All tax must be paid by 3/15
- Separate annual PTET return filed online

# 2021 NYS PTE Timeline

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# PTE Taxable Income

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- PTE taxable income includes income, gain, loss, or deduction of an electing entity that flows through to a direct partner, member, or shareholder for New York personal income tax purposes
- The calculation of PTE taxable income differs between electing New York S corporations and electing partnerships
- Electing Partnerships - The eligible income for partnerships is ALL income allocated to NYS residents, **and** the apportioned NYS income to NYS nonresidents (using the sales, payroll, and property factors)
- Electing New York S corporations - The eligible income for S corporations is ONLY the taxable income apportioned to NYS (using the sales factor) and applies to NYS residents

# Partnerships – PTE Taxable Income

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The partnership is required to classify each partner as a resident or nonresident and would calculate a resident PTE taxable income pool and a nonresident PTE taxable income pool

**Example:** *An electing partnership has New York sourced ordinary income of \$2 million flowing to nonresidents and ordinary income of \$2 million and a capital loss of \$1 million flowing to residents for the tax year. The nonresident PTE taxable income pool of the partnership would be \$2 million, and the resident PTE taxable income pool of the partnership would be \$1 million (\$2 million ordinary income less \$ 1 million capital loss). The PTE taxable income for the partnership would be \$3 million (\$2 million nonresident PTE taxable income plus \$1 million resident PTE taxable income).*

# How to calculate PTET

<b>If the PTE taxable income is:</b>	<b>then the PTET due is:</b>
\$2 million or less	6.85% of PTE taxable income.
greater than \$2 million but less than or equal to \$5 million	\$137,000 plus 9.65% of the excess of PTE taxable income greater than \$2 million.
greater than \$5 million but less than or equal to \$25 million	\$426,500 plus 10.30% of the excess of PTE taxable income greater than \$5 million.
Greater than \$25 million	\$2,486,500 plus 10.90% of the excess of PTE taxable income greater than \$25 million.



# Calculation of PTET Credits

- S corporation – PTET Credit is allocated by the eligible taxpayer's ownership percentage
- Partnership – resident PTET credit pool and nonresident PTET credit pool



# Partnership PTET credit example

➤ *Example: Partnership XYZ has five partners:*

Partner	Profit and loss ownership percentage
Partner A (nonresident)	15%
Partner B (nonresident)	25%
Partner C (resident)	20%
Partner D (resident)	30%
Corporate Partner Q	10%

- *Partnership XYZ computes a nonresident PTE taxable income of \$4 million and a resident PTE taxable income of \$10 million, for a total PTE taxable income of \$14 million. Partnership XYZ computes and pays a PTET of \$1,353,500 on its PTE taxable income.*
- *Corporate Partner Q is not eligible for a PTET credit as a corporation and Corporate Partner Q's income from Partnership XYZ was not included in PTE taxable income.*
- *To compute the nonresident PTET credit pool, Partnership XYZ first divides \$4 million by \$14 million to get 28.57%. Partnership XYZ then determines the nonresident PTET credit pool is \$386,694.95 (\$1,353,500 x 28.57%).*

# Partnership PTET credit example

- Partner A and Partner B, combined, have a profit and loss ownership percentage of 40% of Partnership XYZ so the partnership computes their profit and loss ownership percentages within the pool to be 37.5% for Partner A and 62.5% for Partner B. Partnership XYZ computes Partner A's PTET credit to be \$145,010.61 ( $\$386,694.95 \times 37.5\%$ ) and Partner B's PTET credit to be \$241,684.34 ( $\$386,694.95 \times 62.5\%$ ).
- To compute the resident PTET credit pool, Partnership XYZ divides \$10 million by \$14 million to get 71.43%. Partnership XYZ then determines the resident PTET pool is \$966,805.05 ( $\$1,353,500 \times 71.43\%$ ).
- Partner C and Partner D, combined, have a profit and loss ownership percentage of 50% of Partnership XYZ so the partnership computes their profit and loss ownership percentages within the pool to be 40% for Partner C and 60% for Partner D. Partnership XYZ computes Partner C's PTET credit to be \$386,722.02 ( $\$966,805.05 \times 40\%$ ) and Partner D's PTET credit to be \$580,083.03 ( $\$966,805.05 \times 60\%$ ).

Partner	Profit and loss ownership percentage
Partner A (nonresident)	15%
Partner B (nonresident)	25%
Partner C (resident)	20%
Partner D (resident)	30%
Corporate Partner Q	10%

Partner	PTET Credit
Partner A	\$145,010.61
Partner B	\$241,684.34
Partner C	\$386,722.02
Partner D	\$580,083.03
Corporate Partner Q	0
Total PTET paid	\$1,353,500

# Polling Question #2

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**DO YOU PLAN ON MAKING THE PTET ELECTION?**



# Review of Operating Agreement/Articles of Incorporation

- Partnerships – special allocation of PTET deduction and affect on draws or guaranteed payments
- S corporations – clarify how the S corporation shareholders distributions may be affected



# Single-member LLC

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Evaluate if forming a Pass-Through Entity would be beneficial



# Impact on Individual Estimated Tax Payments

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- For 2021 – individual income tax estimated payments must be made by the owners as if they are not entitled to the PTET credit
  - Individual income tax estimated payments are not considered prepayment of PTET
  - Cash impact – paying twice and refunds filed for when individuals file their tax returns 4/15 or by 10/15, if extended

# Steps to make the Pass-Through Entity Tax (PTET) Election

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The image shows a login form for NY.gov ID. At the top, there is a dark blue header with a white outline of the state of New York on the left and the text "NY.gov ID" in white on the right. Below the header, the form contains the following elements: a label "Username:" followed by a white text input field with a black border; a label "Password:" followed by a grey text input field with a black border; a large, rounded grey button with the text "Sign In" in black; and a link "Forgot your [Username](#) or [Password](#)" in blue text. At the bottom of the form, there is a small, underlined link "[NY.gov ID - Terms of Service](#)".

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Services

Account Summary

Account Summary for:



**Tax relief for New Yorkers impacted by COVID-19.**

See [Tax Department response to novel coronavirus \(COVID-19\)](#) to view guidance and stay up to date.

### Account messages

8/6 at 12:20PM

We have added a new Partnership tax category to the Services menu

3/15 at 3:42PM

Web File Confirmation

3/7 at 10:27AM

Web File your ANNUAL Sales Tax Returns

5/26/20 at 6:51AM

We've changed your sales tax filing status from quarterly to annual.

3/13/20 at 4:28PM

Web File Confirmation

NEW YORK STATE Department of Taxation and Finance

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- Account summary
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- Frequently used
- Payments, bills and notices
- Sales tax - file and pay
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- Corporation tax
  - File a corporation tax extension
  - Make estimated or MFI payment
  - PTET web file
  - View and cancel a scheduled corporation tax payment
- Partnership tax
  - Estimated tax bulk upload
  - File a partnership return extension
  - PTET web file





Pass-Through Entity Tax (PTET) Web File

Taxpayer ID: [redacted] Taxpayer name: [redacted]

Form Selection

PTET is an optional tax imposed on S corporations and partnerships filing in New York.

Select the form you would like to file from the list below.

For more information, see [Pass-Through Entity Tax \(PTET\)](#).

PTET estimated payments are not required for 2021. Members, shareholders, and partners should continue to make their personal income tax (PIT) estimated tax payments without regard to the PTET credit they plan to claim on their 2021 PIT return. The PTET estimated tax payment application will be available by December 15, 2021 for entities that have opted into PTET and wish to make payments for their 2021 taxable year by the end of 2021.

Our applications to file PTET annual returns and file PTET extensions will be available in February 2022.

PTET forms

Form description

Pass-Through Entity Tax (PTET) Annual Election



## Annual Election Information

Complete the following information and select **Continue**.

For more information, see [Pass-through entity tax \(PTET\)](#).

\* Required field

? Select to learn more about a particular field

### Authorized person information

You must be an authorized person to make the annual election.

To determine if you are an authorized person, see [Authorized persons](#).

First name: \*

Last name: \*

Social Security number (SSN): \*  [Show](#)

Confirm Social Security number (SSN): \*  [Show](#)

Title: \* **Select one** [?](#)

Phone number: \*  [?](#)

### Acknowledgment

An entity is not required to be subject to the pass-through entity tax (PTET). If it opts in, its election is irrevocable and will remain in effect for the entire year.

The entity must:

- make all payments of tax electronically;
- file an annual PTET return electronically by the due date below (fiscal year taxpayers, see [instructions](#) for additional information); and
- provide certain PTET information to your partners, members, or shareholders.

Due date: **March 15, 2022** [?](#)

I agree to opt in to the pass-through entity tax (PTET) on behalf of the entity and comply with all requirements listed above: \*  Yes  No [?](#)

[Return to Form Selection](#)

[Continue](#)

## Definitions

**Authorized person:** An individual who is eligible to make the election into the PTET on behalf of an [eligible partnership](#) or [eligible S corporation](#). For partnerships, authorized person includes any member, partner, owner, or other individual with authority to bind the entity and sign returns under Tax Law § 653. For New York S corporations, authorized person includes any officer, manager, or shareholder of the New York S corporation who is authorized under the law of the state where the corporation is incorporated or under the S corporation's organizational documents to make the election, and who represents to having that authorization under penalty of perjury.

**Direct partner, member, or shareholder:** Any member, partner, or shareholder that is issued a federal Schedule K-1 by the electing entity based on the member's, partner's, or shareholder's direct ownership interest in the electing entity. A federal Schedule K-1 issued to an entity that is disregarded for tax purposes, such as a single-member limited liability company, is treated as if issued directly to the individuals or entities that include the disregarded entity's activity on their income tax returns.

**Eligible partnership:** Any partnership [including a limited liability company (LLC) treated as a partnership for federal income tax purposes] that has a filing requirement under Tax Law § 658(c)(1) and is not a publicly traded partnership. A partnership is eligible to make the election even if it has partners that are not eligible for the PTET credit, including, but not limited to, corporate partners.

**Eligible S corporation:** Any New York S corporation (including an LLC treated as an S corporation for New York and federal income tax purposes) as defined by Tax Law § 208.1-A that is subject to the fixed dollar minimum tax under Tax Law § 209.

A federal S corporation that does not have nexus to New York is considered an *ineligible corporation* under Tax Law 620(b)(3)(B). These corporations are **not** eligible to opt in to the PTET.



## Business Address Information

Below is the address information we have on file.

Please review and update as necessary. When complete, select **Continue**.

We will use the address you provide for PTET only. We will not update any other business address.

If you ever need to update this or another business address we have on file, select the *Services* menu in the upper left-hand corner of your *Account Summary* homepage, then select *Business chang*

To change business information other than an address, see [Form DTF-95, Business Tax Account Update \(instructions\)](#).

\* Required field

### Physical address

For foreign addresses, see [instructions](#).

Attention:

Street address: \*

City: \*

U.S. state or Canadian province:

Zip code or Postal code:

Country: \*

### Mailing address

For foreign addresses, see [instructions](#).

Is the mailing address the same as the physical address? \*  Yes  No

Pass-Through Entity Tax (PTET) Annual Election

Taxpayer ID: [REDACTED] Taxpayer name: [REDACTED]

Review and Verify

The transaction is not complete until you select **Submit**. Carefully review all information below and read the eSignature statement. To make changes to your information, select **Edit** in the a from the confirmation page.

Acknowledgement

An entity is not required to be subject to the pass-through entity tax (PTET). If it opts in, its election is irrevocable and will remain in effect for the entire year.

The entity must:

- make all payments of tax electronically;
- file an annual PTET return electronically by the due date below (fiscal year taxpayers, see [instructions](#) for additional information); and
- provide certain PTET information to your partners, members, or shareholders.

Due date: **March 15, 2022**

I agree to opt in to the pass-through entity tax (PTET) on behalf of the entity and comply with all requirements listed above: **Yes**

Authorized person: [REDACTED]

Social Security number (SSN): XXX-XX-[REDACTED]

Title: **Partner**

Phone number: [REDACTED]

Edit

Edit

eSignature

By selecting Submit, I understand and agree that I am making and electronically signing and filing this annual Pass-Through Entity Tax (PTET) election on behalf of an eligible S corporation or partnership. I understand that by making this election, I am obligating the entity to file a Pass-Through Entity Tax return for the tax year to which the election applies. I also understand that the 2021 estimated personal income tax payments of the partners, members or shareholders of the entity must be calculated without regard to their 2021 PTET credit, or they will be subject to penalties and interest. Finally, I understand that, once made, the PTET annual election cannot be revoked for the tax year to which it applies, and that I, as the person making this election on behalf of the entity, by that action become jointly and severally liable for the PTET tax obligations of the entity.

I certify, under the penalty of perjury, that:

1. I am an officer, manager or shareholder authorized under the law of the state where the S corporation is incorporated, or under the organizational documents of the S corporation, to make the election; or if the entity is not an S corporation, I am a member, partner, owner, or other individual with authority to bind the entity or sign returns on its behalf as required by the Tax Law; and
2. All information provided herein is true, accurate, and complete and the social security number, and other personally identifying information I have provided, is my own information.

Submit



Pass-Through Entity Tax (PTET) Annual Election

Taxpayer ID



Taxpayer name



Transaction Confirmation

The New York State Tax Department received your PTET annual election.

- Select **Print** to print this confirmation page for your records.
- Select **File Another Form** to return to the Form Selection page.

Confirmation

Confirmation number:



Transaction date/time:



# Steps to create a new NYS online services account

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Thank you for choosing to create an Online Services account with the New York State Tax Department. Select an account type to learn more about it and

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### Business account

**CREATE BUSINESS ACCOUNT**





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### Business Account Creation

#### Security Check

Enter the security code displayed below and then select **Continue**.

\* Required fields

#### Security check

The following security code is necessary to prevent unauthorized use of this web site. If you are using a screen reading program, select [listen](#) to have the number announced.

717366

Enter the security code displayed above: \*



Continue





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## Department of Taxation and Finance

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### Business Account Creation

#### Access Type



Complete the following information and then select **Continue**.

\* Required fields

 - Select to learn more about a particular field

#### Access type

I would like to gain access to: \*

**Select one**  

- Select one
- All available services
- Only view and pay my bills

**Continue**

## Business Account Creation

### Access Type

Complete the following information and then select **Continue**.

\* Required fields

 - Select to learn more about a particular field

#### Access type

I would like to gain access to: \*  


Have you received a 5 digit PIN from the New York State Tax Department? \* Yes  No   

Continue

## Business Account Creation

### Business Verification

Complete the following information and then select **Continue**.

\* Required fields  - Select to learn more about a particular field

#### Taxpayer information

Taxpayer ID number: \*  

#### Filing history

Have you filed New York State corporation, sales, or withholding tax returns within the last 12 months? \* Yes  No

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### Business Account Creation

#### Business Verification

Complete the following information and then select **Continue**.

\* Required fields

 - Select to learn more about a particular field

#### Taxpayer information

Taxpayer ID number: \*  

#### Filing history

Have you filed New York State corporation, sales, or withholding tax returns within the last 12 months? \* Yes  No

Confirm Taxpayer ID number: \*

Legal name of business: \*  

Home

### Business Account Creation

#### Taxpayer Information

Complete the following information and then select **Continue**.

\* Required fields  - Select to learn more about a particular field

#### Taxpayer information

Taxpayer ID number:

Legal name of business:

#### Terms and conditions

By checking "I agree" and selecting **Submit**, I certify that I am authorized to create this account and act as the [Master Administrator](#) for this account, that all information provided in this account creation is true, correct, and complete, and that I have read and agree to the [terms and conditions](#) for using the Online Services.

\* I agree



## Department of Taxation and Finance

### NY.gov ID Account Creation for Tax and Finance

#### Login Information

Complete the following information and then select **Submit** to finish creating your Online Services account. See [terms of service](#).

\* Required fields

 - Select to learn more about a particular field

#### My Information

Your first name: \*

Your last name: \*

E-mail address: \*

Confirm e-mail address: \*

Phone number: \*  

#### Login Information

Username: \*  

Password: \*  

Confirm password: \*



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### NY.gov ID Account Creation for Tax and Finance

#### Account Confirmation

**Your account has been successfully created**

Your account has been successfully created. Click Login Now to continue.

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# Thank You

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Thank you for your attendance at today's program.

For more information regarding the topics discussed today,  
please feel free to contact:

Lisa F. Marou, CPA  
[lisa.marou@inserocpa.com](mailto:lisa.marou@inserocpa.com)  
(585) 697-9603

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