

DEPARTMENT OF STATE REVENUE

Department of State Revenue
Revenue Ruling #2009-01IND
December 30, 2009

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Adjusted Gross Income Tax – Nonresident Partner Withholding Requirements

A partnership ("Taxpayer") is seeking a Revenue Ruling ("Ruling") granting Taxpayer an exemption from the composite filing requirement found at [IC 6-3-4-12\(h\)](#).

Authority: [IC 6-3-4-12](#).

STATEMENT OF FACTS

Taxpayer provides, in pertinent part, the following facts regarding its request for a Ruling:

[Taxpayer] was formed to construct, own and operate a 96-unit apartment project under Section 236 of the National Housing Act. The apartments are for low and/or moderate income individuals. [Taxpayer], since its formation, has participated in various programs offered by the U.S. Department of Housing and Urban Development aimed at preserving low income housing. [Taxpayer] participates in Section 236 and 241(f) programs from the National Housing Act and Section 8 housing assistance from 1997 HUD Appropriations Act.

Pursuant to a Regulatory Agreement associated with [Taxpayer's] participation in various low income housing programs, the allowable annual distribution is limited to eight percent (8%) return on Preservation Equity (defined as the difference between Preservation Value and the existing first mortgage) less debt service payments on the Equity Take-Out portion of the second mortgage. The annual distribution so calculated can only be paid from Surplus Cash as defined by HUD. If the project does not generate surplus cash, no distribution to the partners is permitted.

[Taxpayer] is domiciled in Indiana and has several partners that are domiciled outside of Indiana. [Taxpayer] was formed in 1971; therefore, most of its assets are fully depreciated and it is reporting taxable income to its partners. Historically, [Taxpayer] has not generated surplus cash, so distributions to partners have not occurred.

[Taxpayer believes] that the Indiana withholding requirements of [IC 6-3-4-12](#) [are] in direct conflict with [Taxpayer's] regulatory agreement issued by a Federal agency (HUD). [Taxpayer] has no course of action available to comply with the withholding requirements and not violate the terms of the Regulatory Agreement. The issue is not new, but... the enactment of the Composite Return requirements and the penalties for noncompliance have made it more difficult for [Taxpayer] to deal with the issue on an "as needed" basis.

We are requesting a ruling that [Taxpayer] be granted an exemption from filing a composite return and the remittance of withholdings tax for non-resident partners in years when compliance with the Indiana Code would violate the HUD regulations. In years when [Taxpayer] does generate surplus cash and can make distributions to the partners, it will comply with the Indiana withholding laws and remit taxes (to the extent of surplus cash) on behalf of its nonresident partners as it [has done in the past].

DISCUSSION

In general, [IC 6-3-4-12\(h\)](#) provides:

A partnership shall file a composite adjusted gross income tax return on behalf of all nonresident individual partners. The composite return must include each nonresident individual partner regardless of whether or not the nonresident individual partner has other Indiana source income.

[IC 6-3-4-12](#)(a) provides in pertinent part:

Every partnership shall, at the time that the partnership pays or credits amounts to any of its nonresident partners on account of their distributive shares of partnership income, for a taxable year of the partnership, deduct and retain therefrom the amount prescribed in the withholding instructions referred to in section 8 of this chapter.

[IC 6-3-4-8](#) pertains to withholding requirements on payments of wages subject to Indiana adjusted gross income tax. The requirement that partnerships file a composite return on behalf of their partners does not represent a substantive change in the amount of adjusted gross income tax to be withheld or remitted by partnerships. Rather, the requirement that partnerships file a composite return on behalf of their partners reflects a change in the reporting requirement, meant to eliminate the necessity for a nonresident partner to file a nonresident individual income tax return. Nothing in such a requirement is in conflict with federal provisions regulating when distributions may be made by the partnership.

RULING

Taxpayer is not exempt from, and must comply with, the composite filing requirement found at [IC 6-3-4-12](#)(h).

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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