

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2010-01 IND
February 1, 2010

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ISSUES

Adjusted Gross Income Tax – Composite Return & Nonresident Partner Withholding Requirements

A partnership ("Taxpayer") is seeking clarification of a previous Revenue Ruling (#2009-01IND) denying 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.

Taxpayer maintains that, typically, it does not make any distributions to its partners because it does not meet the necessary criteria contained in the regulatory agreement, but it does credit its partners' accounts for income and/or deductions. The credits subject Taxpayer to the Indiana composite filing and withholding requirements, but such withholding would be considered a distribution prohibited by its federal regulatory agreement.

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.

Revenue Ruling #2009-01IND determined that [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.

Revenue Ruling #2009-01IND found, inter alia, that 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, but does not represent a substantive change in the law. To the extent that Revenue Ruling #2009-01IND provides a general understanding of the

composite return and withholding requirements found at [IC 6-3-4-12](#), it is still valid. However, while the general rule regarding the composite return requirement as expressed in Revenue Ruling #2009-01IND is correct, the Ruling failed to address Taxpayer's particular circumstances.

In order to harmonize the requirements found at [IC 6-3-4-12](#)(h) with HUD provisions contained in Taxpayer's federal regulatory agreement pertaining to low-income housing providers, [IC 6-3-4-12](#) cannot be read to impose on Taxpayer a composite return and withholding requirement. To read [IC 6-3-4-12](#) in a contrary manner would be to force Taxpayer to violate either Indiana law or its federal regulatory agreement with HUD. Accordingly, when following the requirements contained in [IC 6-3-4-12](#) would result in a low-income housing provider violating the provisions of a federal regulatory agreement, the provider is exempt from the composite return and withholding requirements therein. Conversely, when following the requirements contained in [IC 6-3-4-12](#) would not result in a low-income housing provider violating the provisions of a federal regulatory agreement, the provider is not exempt from the composite return and withholding requirements therein.

RULING

Taxpayer is exempt from the composite return and withholding requirements found at [IC 6-3-4-12](#) for years in which Taxpayer is prohibited by federal law to make distributions, provided that Taxpayer remits to the Department a copy of each out-of-state shareholder's K-1 when it files its IT-65. For years in which Taxpayer makes distributions and credits its shareholders' accounts for any income and/or deductions, Taxpayer will be required to file a composite return on behalf of all shareholders. For those shareholders who received no distributions but had their accounts credited for any income and/or deductions, Taxpayer will not be required to file a composite return or withhold adjusted gross income tax, provided that Taxpayer remits to the Department a copy of each out-of-state shareholder's K-1 when it files its IT-65. However, nothing in this ruling can be interpreted to relieve nonresident shareholders from their duty to pay any tax due. Each non-resident shareholder is required to file an IT-40PNR return and pay any applicable adjusted gross income tax. This Ruling applies only to low-income housing providers subject to federal regulatory agreements, and only to the extent that otherwise required withholdings violate federal law.

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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