**DEPARTMENT OF STATE REVENUE**

**Information Bulletin #72**
**December 2015**
**(Replaces Bulletin #72 dated January 2014)**
**Effective Date: January 1, 2015**

**SUBJECT:** S Corporation, Trust, and Partnership Mandate to File a Composite Return on Behalf of Nonresident Shareholders and Partners

**REFERENCES:** IC 6-3-4-12; IC 6-3-4-13; IC 6-3-4-15

**DISCLAIMER:** Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUMMARY OF CHANGES**
Apart from nonsubstantive, technical changes, this version of the bulletin has been changed to allow a publicly traded partnership that is a nonresident partner to be excluded from being part of the composite return. Permits an entity that files an extension of time to file as provided in IC 6-8.1-6-1 also will be permitted the same extension for withholding if the payment or credit to the nonresident shareholder only occurs once a year. Provides that publicly traded partnerships are not required to file a composite return for the publicly traded partnership's nonresident partners.

**OVERVIEW**
S corporations, trusts, and partnerships are required to file composite adjusted gross income tax returns on behalf of all nonresident shareholders, beneficiaries, or partners. Unless they have income from other Indiana sources, nonresident shareholders are then relieved of the obligation to file an individual adjusted gross income tax return.

NOTE: Due to the similar treatment of composite returns for corporations, trusts, and partnerships, whenever this bulletin mentions "S corporation" or "shareholder," it refers to the S corporation, trust, or partnership and the shareholder, beneficiary, or partner, respectively.

**COMPOSITE RETURN LIMITATIONS**
The following limitations and conditions apply to those shareholders included in a composite return.

- Any short-term capital gain (loss) plus any long-term capital gain (loss) specifically allocated to shareholders shall be allowed subject to any "passive activity" loss limitations pursuant to IRC Section 469 and capital loss limitations imposed on noncorporate taxpayers by IRC Section 1211.
- No deduction shall be permitted for interest paid on investment indebtedness under Section 163(d) of the IRC (limitation on investment interest indebtedness).
- No deduction shall be permitted for net operating losses.
- No personal exemptions shall be permitted.
- No deduction shall be allowed for charitable contributions allowed or allowable pursuant to Section 170 of the IRC.
- Any college credit for individual contributions is limited on the composite return to the lower of each shareholder's state tax liability or $100 (no joint credit with spouse is permitted).
- No credit is permitted for taxes paid to other states.
- Any refund of state or county taxes will be remitted directly to the S corporation.

**COMPOSITE FILING PROCEDURES**
The following procedures must be followed by S corporations and partnerships filing composite returns:

(1) Complete the IT-20SCOMP, IT-41 COMP, or IT-65COMP and set out the calculation of tax attributable to each nonresident shareholder. Indicate the names of all nonresident shareholders required to be included in the composite return. Subject to the limitations above, separately compute the Indiana tax liability of each nonresident shareholder. Enclose this composite schedule with the S Corporation Income Tax Return (Form IT-20S), the Partnership Return (Form IT-65), or the Fiduciary Income Tax Return (Form IT-41).

NOTE: For a partnership, composite income means each nonresident partner's distributive share of income from the partnership that is derived from sources within Indiana as determined by the use of the apportionment formula described in IC 6-3-2-2(b) on the partnership's income. Any limitations imposed on the respective partners by Section 469 of the Internal Revenue Code (passive activity loss rules) will apply to the composite return.

A pass through entity is not required to include a publicly traded partnership in the composite return if the publicly traded partnership is qualified under Section 7704(c) of the Internal Revenue Code and has agreed to file an information return listing the name, address, and taxpayer identification number for each unit.

Publicly traded partnerships are not required to withhold or file composite returns for their partners.

(2) Enter the total tax liability on Form IT-20S, IT-41, or IT-65 of those nonresident shareholders included in the composite return. Enter this amount on the line for total composite tax.

(3) Insert the total amount paid, with Form IT6-WTH withheld on behalf of the nonresident shareholders included in the composite return, on the line for total composite withholding IT-6WTH payments.

(4) Any balance due or overpayment reported as a result is to be remitted by or refunded to the S corporation.

**COMPOSITE WITHHOLDING PAYMENTS (FORM IT-6WTH)**

Amounts withheld from nonresident shareholders included in the composite return should be remitted with Form IT-6WTH. Payment is due the 15th day of the 4th month following the close of the S corporation's tax period. Multiple payments and IT-6WTH vouchers may be filed throughout the tax year or during the extension period. If additional payments are necessary, please contact the Corporate Tax Section at 317-232-0129 for an additional Form IT-6WTH.

The S corporation filing a composite return for the nonresident shareholders is liable for the tax shown on the return and for any additional tax, interest, and penalty as a result of a subsequent audit and examination. A penalty of $500 is imposed on the S corporation that fails to file a composite return for all nonresident shareholders.

The composite schedule shall be due with the S corporation return. If the IRS allows the S corporation an extension to file its federal income tax return, the corresponding due dates for its Indiana income tax returns are extended automatically for the same period, plus 30 days.

**SAFE HARBOR PROVISION**

An S corporation will not be penalized for failure to pay the full amount of tax shown on the return or to pay the deficiency of the withholding taxes due if the S corporation pays the department at least 80% of the withholding tax due for the current year or 100% of the withholding tax due for the preceding year before the 15th day of the 4th month after the end of the S corporation's taxable year.

An S corporation permitted an extension of time to file its income tax return under IC 6-8.1-6-1 will be granted the same extension for withholding if withholding only occurs once a year.

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Commissioner

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