STATE of INDIANA

DEPARTMENT OF REVENUE

INDIANA GOVERNMENT CENTER NORTH
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INDIANAPOLIS, IN 46204-2253

INFORMATION BULLETIN #72
INCOME TAX
JANUARY 2014
(Replaces Bulletin #72 dated May 2012)
Effective Date: Jan. 1, 2014

SUBJECT: S Corporation 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

SUMMARY OF CHANGES

Apart from nonsubstantive, technical changes, this version of the bulletin has been changed from the previous version to provide that nonresident shareholders and partners have the ability to opt out of the composite filing requirement by using Schedule IN-COMPA. For those shareholders and partners still included on the composite return, withholding may be remitted directly into the corporate account by using Form IT-6WTH. Safe harbor guidance is also now included in the bulletin.

OVERVIEW

S corporations and partnerships are required to file composite adjusted gross income tax returns on behalf of all individual nonresident shareholders or partners. Unless they have income from other Indiana sources, individual nonresident shareholders are then relieved of the obligation to file an individual adjusted gross income tax. Any shareholder that is a corporation or partnership must be excluded from the composite return.

NOTE: Due to the similar treatment of composite returns for corporations and partnerships, whenever this bulletin mentions “S corporation” or “shareholder,” it refers to the S corporation or partnership and the shareholder 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 partners 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.
- No credit carryovers are permitted.
- Any refund of state or county taxes will be remitted directly to the corporation.

COMPOSITE FILING PROCEDURES

The following procedures must be followed by S corporations and partnerships filing composite returns:

(1) Complete the IT-20SCOMP or IT-65COMP and set out the calculation of tax attributable to each individual nonresident shareholder. Indicate the names of all nonresident individuals required to be included in the composite return. Subject to the limitations above, separately compute the Indiana tax liability of each individual 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 individual 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.

(2) Enter the total tax liability on Form IT-20S or IT-65 of those nonresidents 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) Submit withholding tax payments on behalf of all nonresident shareholders who opted out of the composite filing, along with any withholding for the corporation or partnership. This may be done on a monthly, annual, or one-time basis using Form WH-1 (Employers Withholding Tax Return).

(5) File copy A of Form WH-18 (Indiana Miscellaneous Withholding Tax Statement for Nonresidents) with the department, together with Form WH-3 (Annual Withholding Reconciliation). These must be filed by the end of the second month following the close of the tax period for nonresident withholding accounts. For nonresident one-time distribution withholding accounts, the filing deadline is the 15th day of the 4th month following the close of the tax period.

NOTE: Copy B should be given to the recipient for his records. Copy C should be enclosed with the appropriate tax return claiming a credit. Copy D is for the payer's records. Form WH-3 is mailed automatically to the payer by March 15 of each year. No WH-18 will be issued to shareholders or partners included on the composite return. Do not include IT-6WTH payments on the WH-3. For information related to electronic filing requirements, refer to Departmental Notice #5, available online at http://www.in.gov/dor/3618.htm.

(6) Partners and shareholders opting out of the composite return must provide the partnership or S corporation with Schedule IN-COMPA (Composite Filing Opt-Out Affidavit). The affidavit is available online at http://www.in.gov/dor/4879.htm. It does not need to be enclosed with the IT-65 or IT-20S return but must be made available upon request by the department.

COMPOSITE WITHHOLDING PAYMENTS (FORM IT-6WTH)

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

The 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 or partnership that fails to file a composite return for all nonresident individual shareholders/partners that have not opted out of the composite filing.

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

SAFE HARBOR PROVISION

An S corporation or partnership will not be penalized for failure to pay the full amount of tax shown on the return or pay the deficiency of the withholding taxes due if the corporation or partnership 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 corporation's or partnership's taxable year.

Michael J. Alley
Commissioner