TAXPAYER SERVICE DIVISION

FYI – For Your Information

Nonresident Partners and Shareholders of Partnerships and S Corporations

GENERAL INFORMATION

A partnership or S corporation is required to ensure that its nonresident partners and shareholders file a Colorado income tax return to report their share of Colorado source income earned by the partnership or S corporation. This is accomplished in one of three ways:

- File a composite return on behalf of the nonresident partner/shareholder [§39-22-601(2.5)(d),C.R.S., §39-22-601(5)(d), C.R.S.]
- File an agreement to file and pay tax for each partner/shareholder [§39-22-601(2.5)(f) C.R.S., §39-22-601(5)(f), C.R.S.]
- Withhold for each nonresident partner/shareholder [§39-22-601(2.5)(h), C.R.S., §39-22-601(5)(h), C.R.S.]

Nonresident partners and shareholders include nonresident individuals and nonresident estates or trusts. Partnerships and corporations that are partners or shareholders in a pass-through entity are not subject to the withholding requirements addressed in this FYI.

COMPOSITE RETURNS

A partnership or S corporation may file a composite return on Form 106 for its nonresident partners or shareholders as a simplified way of paying the income tax owed by those taxpayers. This replaces the preparation of a separate Colorado income tax return for each taxpayer. Each nonresident partner or shareholder may elect to be included or excluded from the composite filing. The tax paid will be 4.63% of the Colorado source income attributable to the partners/shareholders included in the composite return.

Includable Taxpayers

A composite return filed by a partnership or S Corporation may include:

1. nonresident individuals,
2. nonresident estates or trusts, and
3. other pass-through entities, to the extent their members/shareholders consist of taxpayers included in 1 or 2 above, may be included to simplify the filing requirements of those entities. However, the inclusion of those entities may not compromise the accuracy of the amount of tax paid on behalf of any members/shareholders. If the inclusion of a pass-through entity in a composite return would affect the tax due, then each pass-through entity must file a separate composite return that includes that entity's nonresident individuals, estates or trusts.

C Corporations cannot be included in a composite return.

Do not complete or submit Form DR 0107 or DR 0108 for any taxpayer included in a composite return.

A taxpayer generally should not be included in a composite return if they have other Colorado source income that will require the filing of a separate Colorado income tax return. If a taxpayer realizes after the composite return is filed that other income requires a separate

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Colorado income tax return to be filed, the return filed will exclude from the "Colorado column" of Form 104PN any income reported in the composite return.

Election for Inclusion

Nonresident partners or shareholders who are eligible for inclusion in a composite return must elect whether to be included in such return. This election is an agreement between the taxpayer and the pass-through entity and can be done in any manner the parties agree upon. A written or signed agreement is not required. The election is communicated to the Department of Revenue in column four of Form 106, Part III.

Estimated Tax

Estimated tax payments for a composite return are paid with Form 106EP. The estimated tax penalty on a composite return is computed for each partner or shareholder included in the return, not on the total tax due. This penalty will never apply unless the tax due for an individual is more than $1,000. To compute the penalty, complete Form 204 for each individual and attach a copy of each form to the return when filed.

Net Operating Loss

A net operating loss cannot be carried forward or back on a composite return. Net operating losses of individuals must be claimed in the same year as claimed on the federal return and no separate computation of a Colorado loss is allowed on a composite return. [§39-22-504, C.R.S.]

NONRESIDENT PARTNER OR SHAREHOLDER AGREEMENT

A nonresident partner or shareholder can complete Form 0107, Colorado Nonresident Partner or Shareholder Agreement. This establishes that the taxpayer is required to file a Colorado income tax return, will report the Colorado source income and pay any Colorado tax due thereon, and will be subject to Colorado Department of Revenue enforcement and collection procedures. The forms are completed and signed by the nonresident partner or shareholder and returned to the partnership or corporation to be attached to the return of income, Form 106. Provide a completed form DR 0107 each year for each nonresident partner/shareholder establishing that he/she will file a Colorado income tax return.

NONRESIDENT PARTNER OR SHAREHOLDER WITHHOLDING

Withholding is required for any nonresident partner or shareholder that

- fails to complete, sign and return Form 0107 to the partnership or corporation prior to the due date of the return, and
- is not included in a composite return.

The partnership or S corporation must withhold 4.63% of the taxpayer's Colorado source income. The amount withheld is submitted with Form 0108, Statement of Colorado Tax Remittance for Nonresident Partner or Shareholder. The amount withheld is credited to the taxpayer's account and is claimed on the taxpayer's return as an estimated tax payment.

When submitting Form 0108, a separate check can be sent with each form or one check can be submitted for up to 50 forms. However, there must be a separate Form 0108 submitted with the payment for each member for whom withholding is remitted.

Withholding payments will be applied exactly as indicated on the accompanying Form 0108(s). For example, if a payment is remitted with a document allocating the payment to a partnership, the payment will be applied to the partnership account and will not be subsequently transferred to the individual partners' accounts. As a result, no credit will be available on the individual partners' accounts and, if they claim credit for partnership withholding on their individual returns, the credit will be denied.

While a lower tier partnership may elect to withhold and remit taxes on behalf of an upper tier partnership's non-resident individual members, it bears no such obligation. Rather, the obligation to withhold resides with the upper tier partnership. If such withholding is made, payment must be remitted with a separate Form 0108 for each taxpayer who will ultimately be claiming the withholding against their tax liability, specifying the taxpayer's name, social security number or Colorado account number and withholding amount. Payments will not be subsequently transferred from upper tier partnership accounts to the partnership's individual members.

PUBLICLY TRADED PARTNERSHIPS

For tax years ending on or after August 8, 2005, publicly traded partnerships that are not treated as a corporation under section 7704(a) of the Internal Revenue Code are not required to file a composite return, nonresident partner agreement, or nonresident partner withholding on behalf of its nonresident partners.

FURTHER INFORMATION

FYIs, commonly used forms and additional tax information are available on the Web at *www.taxcolorado.com*

For additional Colorado tax information visit the "Tax Information Index" which covers a variety of topics including links to forms, publications, regulations, statutes and general questions and answers. The "Tax Information Index" is located at *www.taxcolorado.com*

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved these FYIs.