

R865. Tax Commission, Auditing.

R865-9I. Income Tax.

R865-9I-13. Pass-Through Entity Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

- (1) A pass-through entity must withhold and pay over to the state a tax on:
 - (a) the business income of the pass-through entity to the extent the business income is derived from Utah sources in accordance with Section 59-10-116; and
 - (b) the nonbusiness income of the pass-through entity derived from or connected with Utah sources.
 - (i) "Nonbusiness income of the pass-through entity derived from or connected with Utah sources" does not include portfolio income if the income would not be reportable to Utah on the pass-through entity taxpayer's Utah state tax return or the Utah state tax return of any downstream pass-through entity taxpayer.
 - (ii) "Downstream pass-through entity taxpayer" means a pass-through entity taxpayer that is a pass-through entity taxpayer of any entity that is itself a pass-through entity taxpayer.
- (2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:
 - (a) name;
 - (b) address;
 - (c) social security number;
 - (d) percentage of ownership in pass-through entity;
 - (e) Utah income attributable to that pass-through entity taxpayer; and
 - (f) amount of Utah tax withheld on behalf of that pass-through entity taxpayer.
- (3) The income of a pass-through entity that is an S corporation shall be calculated by:
 - (a) adding back to the line on the federal Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:
 - (i) charitable contributions;
 - (ii) total foreign taxes paid or accrued; and
 - (iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or
 - (b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the federal Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income/loss reconciliation" line shall be used for purposes of this rule.
- (4) A pass-through entity shall calculate the tax it is required to withhold on behalf of pass-through entity taxpayers by:
 - (a) multiplying the income of the pass-through entity computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and
 - (b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.
- (5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer of that pass-through entity if the pass-through entity taxpayer is:
 - (i) exempt from taxation under Section 59-7-102 and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;

(ii) a real estate investment trust if all of the earnings of the real estate investment trust are distributed to the owners of the real estate investment trust; or

(iii) a person exempt from state income tax under Section 59-10-104.1.

(6) For purposes of Subsections 59-10-1403.2(5) and (6), a pass-through entity shall apply to the commission for a waiver of penalty or interest, on an amount the pass-through entity fails to pay or withhold and for which the pass-through entity taxpayer files and pays in a timely manner, by checking the box on the tax return requesting the waiver for required withholding.

(7) An entity that is disregarded for federal tax purposes is disregarded for purposes of pass-through entity withholding.

(8) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.

(9) Examples.

(a) Partnership A has two partners, both of whom are nonresident individuals exempt from state income tax under Section 59-10-104.1. Partnership A is not required to withhold Utah tax for these partners.

(b) For tax year 2010, Partnership C has two partners, Partnerships D and E. Partnership D has two partners, both Utah resident individuals. Partnership E has three nonresident partners, all of whom are subject to Utah state tax. Partnership C's responsibility for withholding is based on Partnerships D and E, not the partners of Partnerships D and E. Accordingly, Partnership C must withhold tax on behalf of Partnerships D and E. If, however, both Partnership D and the partners of Partnership D file returns and pay any tax due by the filing due date for Partnership C, including extensions, Partnership C may elect to not withhold those amounts and may apply to the Tax Commission, by checking the box on the tax return requesting the waiver for required withholding, for a waiver of tax, penalty, and interest on amounts Partnership C should have collected and remitted for Partnership D, but did not.

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: February 21, 2013

Notice of Continuation: March 20, 2007

Authorizing, and Implemented or Interpreted Law: 59-10-116; 59-10-117; 59-10-118; 59-10-1403.2; 59-10-1405