

PROPOSED AMENDMENT

SB 259 # 3

DIGEST

Partnership composite returns. Removes penalty provisions that apply if a pass through entity fails to include in a composite return nonresident partners, nonresident shareholders, or nonresident beneficiaries that do not have distributive share income of greater than \$0. Makes conforming changes.

- 1 Page 1, delete lines 1 through 17.
- 2 Delete page 2.
- 3 Page 3, delete lines 1 through 39, begin a new paragraph and insert:
- 4 "SECTION 1. IC 6-3-2.1-2, AS AMENDED BY P.L.194-2023,
- 5 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 6 UPON PASSAGE]: Sec. 2. The following definitions apply throughout
- 7 this chapter:
- 8 (1) "Electing entity" means a pass through entity described in
- 9 IC 6-3-1-35 that is subject to Subchapter K or Subchapter S of the
- 10 Internal Revenue Code and makes the election under this chapter.
- 11 (2) "Entity owner" means the direct or indirect owners of an
- 12 electing entity that are ultimately taxable on the entity's income
- 13 under Subchapter K or Subchapter S of the Internal Revenue
- 14 Code, except an owner described in subdivision (4)(A) through
- 15 (4)(C).
- 16 (3) "Nonresident" means:
- 17 (A) a nonresident partner as defined by IC 6-3-4-12(n);
- 18 (B) a nonresident shareholder as defined by IC 6-3-4-13(n);
- 19 (C) a nonresident beneficiary as defined by ~~IC 6-3-4-15(i);~~
- 20 **IC 6-3-4-15(j);** or
- 21 (D) in the case of a shareholder of a corporation described in
- 22 IC 6-3-2-2.8(2), a corporation described in Section 501(c)(3)
- 23 of the Internal Revenue Code that is exempt from taxation
- 24 under Section 501(a) of the Internal Revenue Code and that is
- 25 not domiciled in Indiana;
- 26 whichever is applicable.

(4) "Owner" means a direct or indirect owner of an electing entity and includes a beneficiary of an estate or trust. However an owner shall not include:

(A) an entity described in IC 6-3-2-2.8(3) that is not a partnership, a trust, or a corporation described in IC 6-3-2-2.8(2);

(B) an entity described in IC 6-3-2-2.8(5); or

(C) any other entity as determined by the department and listed in instructions or guidance issued by the department.

(5) "Resident" means a partner, shareholder, or beneficiary:

(A) that, in the case of an individual, estate, or trust, is a resident of Indiana as defined in IC 6-3-1-12; or

(B) that is a partnership or corporation, including a corporation described in IC 6-3-2-2.8(1) or IC 6-3-2-2.8(2), that is domiciled in Indiana."

Page 6, delete lines 3 through 5, begin a new paragraph and insert:

"(j) If a partnership does not include all nonresident partners **that have distributive share income from the partnership:**

(1) as determined under this article; and

(2) derived from Indiana sources;

of greater than zero dollars (\$0) in the composite return, the partnership is subject to the penalty imposed under IC 6-8.1-10-2.1(j)."

Page 6, line 6, reset in roman "(k)".

Page 6, line 6, delete "(j)".

Page 6, line 17, reset in roman "(l)".

Page 6, line 17, delete "(k)".

Page 6, line 31, reset in roman "(m)".

Page 6, line 31, delete "(l)".

Page 6, line 31, reset in roman "(k),".

Page 6, line 31, delete "(j),".

Page 6, line 38, reset in roman "(n)".

Page 6, line 38, delete "(m)".

Page 9, delete lines 8 through 10, begin a new paragraph and insert:

"(k) If a corporation described in subsection (a) does not include all nonresident shareholders **who have distributive share income from the corporation:**

(1) as determined under this article; and

(2) derived from Indiana sources;

of greater than zero dollars (\$0) in the composite return, the corporation is subject to the penalty imposed under

- 1 IC 6-8.1-10-2.1(j).".
- 2 Page 9, line 11, reset in roman "(l)".
- 3 Page 9, line 11, delete "(k)".
- 4 Page 9, line 22, reset in roman "(m)".
- 5 Page 9, line 22, delete "(l)".
- 6 Page 9, line 22, reset in roman "(l)".
- 7 Page 9, line 22, delete "(k)".
- 8 Page 9, line 29, reset in roman "(n)".
- 9 Page 9, line 29, delete "(m)".
- 10 Page 9, delete lines 33 through 42.
- 11 Delete pages 10 through 14.
- 12 Page 15, delete lines 1 through 29, begin a new paragraph and
- 13 insert:
- 14 "SECTION 4. IC 6-3-4-15, AS AMENDED BY P.L.1-2023,
- 15 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 16 UPON PASSAGE]: Sec. 15. (a) A trust or estate shall, at the time that
- 17 it distributes income (except income attributable to interest or
- 18 dividends) to a nonresident beneficiary, deduct and retain therefrom the
- 19 amount prescribed in the withholding instructions referred to in section
- 20 8 of this chapter. The trust or estate so distributing income to a
- 21 nonresident beneficiary:
- 22 (1) is liable to this state for the tax which it is required to deduct
- 23 and retain under this section and is not liable to the beneficiary for
- 24 the amount deducted from the distribution and paid to the
- 25 department in compliance, or intended compliance, with this
- 26 section; and
- 27 (2) shall pay the amount deducted to the department before the
- 28 thirtieth day of the month following the distribution, unless an
- 29 earlier date is specified by section 8.1 of this chapter.
- 30 If a trust or estate credits a beneficiary with pass through entity tax
- 31 imposed under IC 6-3-2.1, the withholding required for that beneficiary
- 32 under this section shall be reduced by the tax credited to the
- 33 beneficiary under IC 6-3-2.1, but in no event shall the tax required to
- 34 be withheld be reduced to less than zero dollars (\$0).
- 35 (b) A trust or estate shall, at the time that it makes a payment to the
- 36 department under this section, deliver to the department a return which
- 37 shows the total amounts distributed to the trust's or estate's nonresident
- 38 beneficiaries, the amount deducted from the distributions under this
- 39 section, and any other information required by the department. The
- 40 trust or estate shall file the return on the form prescribed by the

1 department. A trust or estate which makes the deduction and retention
2 required by this section shall furnish to its nonresident beneficiaries
3 annually, but not later than thirty (30) days after the end of the trust's
4 or estate's taxable year, a record of the amount of tax deducted and
5 retained from the beneficiaries. The trust or estate shall furnish the
6 information on the form prescribed by the department.

7 (c) The money deducted and retained by a trust or estate under this
8 section is money of this state. Every trust or estate which deducts and
9 retains any money under this section shall hold the money in trust for
10 this state until it pays the money to the department in the manner and
11 at the time provided in this section. The department may require a trust
12 or estate to post a surety bond to protect this state with respect to
13 money deducted and retained by the trust or estate under this section.
14 The department shall determine the amount of the surety bond.

15 (d) The provisions of IC 6-8.1 relating to penalties or to additions to
16 tax in case of a delinquency apply to trusts and estates which are
17 subject to this section. For purposes of this subsection, any amount
18 deducted, or required to be deducted and remitted to the department,
19 under this section is considered the tax of the trust or estate, and with
20 respect to that amount, it is considered the taxpayer.

21 (e) Amounts deducted from distributions to nonresident
22 beneficiaries under this section during a taxable year of the trust or
23 estate are considered a partial payment of the tax imposed on the
24 nonresident beneficiary for his taxable year within or with which the
25 trust's or estate's taxable year ends. The department shall accept a
26 return made by the trust or estate under subsection (b) as evidence of
27 the amount of tax deducted from the income distributed to a
28 nonresident beneficiary.

29 (f) This section does not relieve a nonresident beneficiary of his
30 duty to file a return at the time required under IC 6-3. The nonresident
31 beneficiary shall pay any unpaid tax at the time prescribed by section
32 5 of this chapter.

33 (g) If a trust or estate fails to withhold and pay any amount of tax
34 required to be withheld under this section and thereafter the tax is paid
35 by the beneficiaries, the amount of tax paid by the beneficiaries may
36 not be collected from the trust or estate but it may not be relieved from
37 liability for interest or penalty otherwise due in respect to the failure to
38 withhold under IC 6-8.1-10.

39 (h) A trust or estate shall file a composite adjusted gross income tax
40 return on behalf of all nonresident beneficiaries. The composite return

must include each nonresident beneficiary regardless of whether the nonresident beneficiary has other Indiana source income.

(i) If a trust or estate does not include all nonresident beneficiaries that have distributable net income from the trust or estate:

(1) as determined under this article; and

(2) derived from Indiana sources;

of greater than zero dollars (\$0) in the composite return, the trust or estate is subject to the penalty imposed under IC 6-8.1-10-2.1(j).

(j) For purposes of this section, a "nonresident beneficiary" is:

(1) an individual who does not reside in Indiana;

(2) a trust that does not reside in Indiana;

(3) an estate that does not reside in Indiana;

(4) a partnership that is not domiciled in Indiana;

(5) a C corporation that is not domiciled in Indiana; or

(6) an S corporation that is not domiciled in Indiana.

(k) If a trust or estate is permitted an extension to file its income tax return under IC 6-8.1-6-1, then the return and payment due under this subsection shall be allowed the same treatment as the extended income tax return with respect to due dates, interest, and penalties under IC 6-8.1-6-1."

Page 15, line 32, reset in roman "IC 6-3-4-12(k)".

Page 15, line 33, delete "IC 6-3-4-12(j)".

Page 15, line 33, reset in roman "IC 6-3-4-13(l)".

Page 15, line 33, delete "IC 6-3-4-13(k)".

Page 17, delete lines 17 through 22, begin a new paragraph and insert:

"(j) If a pass through entity (as defined in IC 6-3-1-35) fails to include all nonresident partners, nonresident shareholders, or nonresident beneficiaries in a composite return as required by ~~IC 6-3-4-12(i)~~, **IC 6-3-4-12(j)**, ~~IC 6-3-4-13(j)~~, **IC 6-3-4-13(k)**, or ~~IC 6-3-4-15(h)~~, **IC 6-3-4-15(i)**, a penalty of five hundred dollars (\$500) per pass through entity is imposed on the pass through entity. **For purposes of this subsection:**

(1) no penalty shall be imposed on the failure to list nonresident partners, nonresident shareholders, or nonresident beneficiaries not described in IC 6-3-4-12(j), IC 6-3-4-13(k), or IC 6-3-4-15(i), on a composite return; and

(2) the determination of whether a partner, shareholder, or beneficiary is required to be included on a composite return

1 **shall be determined at the time the pass through entity files its**
 2 **return required under IC 6-3 unless the determination by the**
 3 **pass through entity was the result of:**

4 **(A) fraud; or**

5 **(B) intentional or reckless disregard of IC 6-3 or the**
 6 **Internal Revenue Code."**

7 Page 17, line 23, reset in roman "(k)".

8 Page 17, line 23, delete "(j)".

9 Page 17, line 35, reset in roman "(l)".

10 Page 17, line 35, delete "(k)".

11 Page 18, delete lines 11 through 42, begin a new paragraph and
 12 insert:

13 "SECTION 6. [EFFECTIVE UPON PASSAGE] **IC 6-3-4-12,**
 14 **IC 6-3-4-13, IC 6-3-4-15, and IC 6-8.1-10-21, all as amended by this**
 15 **act, are effective for pass through entity returns due after passage**
 16 **of this act, including any extensions allowable for the return."**

17 Renumber all SECTIONS consecutively.

(Reference is to SB 259 as introduced.)