



August 10, 2011

PASS-THROUGH ENTITY TAX

ABILITY TO FILE FORM IT1040 WHEN AN INDIVIDUAL INVESTOR IS INCLUDED IN AN IT 4708 COMPOSITE RETURN.

The Department of Taxation has received questions regarding its position on the audit practice concerning the filing requirement of an individual non-resident investor in a pass-through entity. Specifically, when a pass-through entity makes the election to file the Ohio composite return, form IT 4708, on behalf of its non-resident investors and when the individual non-resident investor's sole source of Ohio income is from a pass-through entity, does Ohio Revised Code (R.C.) 5747.08(J) allow the individual non-resident investor to file an Ohio individual income tax return, form IT 1040, and take the refundable pass-through entity credit for taxes already paid by the entity on behalf of the investor?

Our Chief Counsel has reviewed this audit practice and the relevant sections of the Ohio Revised Code. After diligent consideration of the law and its intent, he has determined that if a non-resident individual investor has Ohio-sourced income or loss other than that earned through the pass-through entity and is *required* to file an Ohio individual income tax return, IT 1040, then the individual non-resident investor is entitled to a refundable credit on the IT 1040 return equal to the investor's proportionate share of the tax paid by the pass-through entity on behalf of the investor and as such, will be allowed a credit for the taxes paid per R.C. 5747.08(J). This credit prevents double taxation of the non-resident individual investor's income. The entity's composite election, once made, is binding and irrevocable for the taxable year for which the election is made pursuant to R.C. 5747.08(D)(3).

However, if a non-resident individual investor included in a composite return has no Ohio-sourced income or loss other than that earned through the pass-through entity, the individual cannot file an IT 1040 return and is not entitled to the refundable pass-through entity credit pursuant to R.C. 5747.08(J).

This determination will be applied prospectively beginning with returns filed for tax year 2011. However, for individuals whose only source of Ohio income is from a pass-through entity or entities that have made the election under R.C. 5747.08(D), the Department of Taxation will not accept any IT 1040 or consider any pass-through entity credit on an amended IT 1040 return after the effective date of this alert for any period prior to the current tax year (2010). If you have any questions, please call the Pass-Through Entity Tax section of the Ohio Department of Taxation at (614)387-0234.