Indiana Department of Revenue

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Income Tax Information Bulletin	#72A
Subject:	Revised Procedures for Partnership Audits, Amended Returns, and Adjustments for Other Entities Arising from Partnership Adjustments
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Summary of Changes

Other than nonsubstantive, technical changes, this bulletin has been revised to reflect the enactment of the pass through entity tax ("PTET") for tax years 2022 and later. In addition, this bulletin is updated to reflect the disallowance of new elections for partnerships to be subject to tax pursuant to IC 6-3-4.5. Also, this bulletin has been updated to reflect revised procedures for issuing proposed adjustments. Further, this bulletin has been updated to provide that partnership audit, protest, assessment, and other rules apply to S corporations when an S corporation has made an election to be subject to pass through entity tax. Finally, this bulletin has been updated to reflect an additional clarifying example and to update the maximum tax rates applicable to partnership assessments.

Introduction

Pursuant to Senate Enrolled Act ("SEA") 383 (2021), Indiana adopted a new regime governing partnership audits and amended returns. These changes largely were required as a result of the new federal partnership audit regime. However, several changes were related to issues other than federal changes. This regime is effective for partnership audits and amended returns occurring on or after June 30, 2021, as well as federal partnership audits conducted at the partnership level for 2018 and later or partnerships that elected into the federal partnership-level audit regime for earlier taxable years.

Prior to the enactment of IC 6-3-4.5, if a partnership item was adjusted, Indiana law required that the partnership item pass through to the partners. This was true both for amended returns and for department-initiated adjustments. Any protest would be heard at the partner level rather than at the partnership level. Further, any statute of limitations for assessment and refund would be determined at the partner level.

IC 6-3-4.5 changed the procedures for partnership audits to provide that most issues are resolved at the partnership level prior to issuance of the changes to the partners. In addition, IC 6-3-4.5 provides that no later than April 30, 2023, a partnership may make an election to be subject to tax at the partnership level with some limitations.

The procedures also apply to S corporations that make an election to be subject to the PTET. However, the procedures only apply to the assessment of PTET and the shareholder reporting of income from the S corporation. Any reference to a partnership shall also be considered to be a reference to an S corporation in these circumstances.

For purposes of this bulletin, references to composite tax are to taxes required to be withheld on behalf of nonresident partners (or shareholders or beneficiaries). Any references to PTET schedules for taxable years are to the Schedule Composite and Schedule Composite-COR for taxable years beginning in 2022, and include Schedule PTET starting in 2023.

Department-Initiated Changes

If the department initiates a change to a partnership attribute (income, deduction, credit, and so forth), the department will provide the partnership with a report of proposed partnership adjustments ("ROPPA"). The report may be issued by the department as an "audit summary report" or similar title. The ROPPA will detail the changes made to each partner's tax attributes for any affected change and provide a copy to the partnership's tax representative. However, in the case of simple pro rata adjustments, such as a change in income or deduction that flows proportionately to each partner, the department is permitted to report the change without a full breakdown by partner. In addition, in certain cases where the partner's income is reported correctly but the tax is incorrectly computed, the department may issue a regular proposed assessment without a specific breakout by partner. A proposed assessment for composite tax and PTET also may be sent to the partnership at the same time as the ROPPA.

Upon receipt of the ROPPA, the partnership has the right to protest any adjustment in the ROPPA that results in the potential of additional tax for any partner for a particular taxable year. In addition, the partnership has the right to protest any adjustment made in a ROPPA for a taxable year even if there is no additional tax, provided that the adjustment relates to a ROPPA in a year in which there is additional tax due.

Example #1: Partnership has an adjustment for 2020 that has the effect of reducing an addback for state taxes paid because the liability was in fact paid in 2021 instead of 2020. The same adjustment for 2021 results in an increase of the same amount. The 2020 adjustment will not increase any partner's liability, while 2021 has the potential of increasing at least one partner's tax liability. The adjustments for 2020 and 2021 each can be protested because they both relate to the 2021 adjustment that increased tax.

A partnership has 60 days from the issuance of the ROPPA to protest the ROPPA. A protest of a ROPPA will be handled in the same manner as any other protest of a proposed assessment, including the same rights to rehearing and judicial appeal.

A ROPPA is considered final after any of the following:

1. 60 days after the ROPPA is issued, if the ROPPA is not appealed to the department within the 60-day period.
2. If a timely appeal is requested, the time in which an original tax appeal to the Indiana Tax Court has expired.
3. If a timely appeal to the Indiana Tax Court is filed, the time after which no further appeal or rehearing can be requested.
4. If a case is settled, the date on which the settlement agreement is finalized.

If the outcome of an appeal or settlement from a ROPPA modifies the original ROPPA, the department has 180 days to issue a report of final partnership adjustments ("ROFPA") incorporating such modifications. A ROFPA may have a title such as "supplemental audit summary report" if post-ROPPA changes occurred. If the department does not issue the ROFPA within the 180-day period, the time period for a partnership or other pass through entity to provide amended statements or reports in a timely manner is extended by the length of time the department is late in issuing a ROFPA (See the section on the Failure to Provide Timely Reports or Statements for further discussion). If the ROPPA is unchanged, the ROPPA becomes the ROFPA on the date specified above.

When a partnership receives a ROFPA or when a ROPPA becomes final, the partnership has 90 days to issue a partner level adjustments report ("PLAR") to each of its direct partners and to the department. The PLAR shall consist of an amended K-1 for each taxable year affected by the ROFPA and any other information necessary to process amended returns (e.g., apportionment information). In addition, the partnership is required to remit any composite tax and PTET (post-2021) due within the 90-day period.

When a partner receives a PLAR, the next steps depend on whether or not the partner is a pass-through entity. If the partner is a pass-through entity, the partner has 30 days to issue amended K-1s to each owner or beneficiary. This 30-day period is repeated for each level of pass-through entity. If the partner owes composite withholding tax or PTET tax due, the partner must also file amended schedules for composite tax and PTET and remit any tax due within the 30-day period. If the partner is not a pass through entity, the partner has 90 days to report the adjustments resulting from the PLAR and remit any tax due. This timetable is mandatory regardless of whether or not the statute of limitations for amended returns has expired.

Example #2: Partnership A is owned by Individual B and Partnership C. Partnership C is owned by Individual D and S Corporation E. S Corporation E is owned by Individual F.

Partnership A receives a ROFPA. Within 90 days it is required to issue a PLAR to Individual B and Partnership C. Partnership C is required to issue an amended K-1 no more than 30 days later (i.e., day 120 after the ROFPA) to Individual D and S Corporation E. S Corporation E is required to issue an amended K-1 no later than day 150 (90 days plus 30 days for Partnership C plus an additional 30 days for S corporation E).

Individual B is required to file an amended return by day 180 after the ROFPA. Individual D is required to file an amended return by day 210 after the ROFPA (90 days after Partnership C is required to issue the amended K-1). Individual F is required to file an amended return by day 240 after the ROFPA.

A special rule applies if a PLAR results in a direct or indirect partner receiving two sets of adjustments. In that case, the date of the amended K-1 or amended return is the latest date determined after application of the rules set forth above. For purposes of applying this special rule, the deadlines shall be determined only one time.

Example #3: Assume the same facts as Example 2, except that S Corporation E also directly owns a portion of Partnership A. S Corporation E's deadline for filing an amended return and issuing an amended K-1 is 120 days from the ROFPA based on its ownership of Partnership A and 150 days based on its ownership based on its ownership of Partnership C. In this case, S Corporation E's deadline is 150 days from the ROFPA. S Corporation E cannot use its presence in multiple tiers to create an indefinite delay.

Example #4: Assume the same facts as Example 2, except that Individual F directly owns a portion of Partnership A. Individual F's deadline for filing an amended return based on direct ownership of Partnership A would be 180 days from the ROFPA and Individual F's deadline based on ownership of S Corporation E would be 240 days from the ROFPA. Individual F's deadline is 240 days from the ROFPA.

For a direct or indirect partner in a partnership, any adjustment from a PLAR is considered final. Nevertheless, the partner may appeal any proposed assessment in the same manner as otherwise provided in IC 6-8.1-5, subject to the partnership-level return being considered conclusive.

Example #5: Partnership A has a deduction disallowed for 2020. Individual B's share of the disallowed deduction is $20,000, resulting in $1,000 of additional tax absent any other changes. Individual B files an amended return reporting the $20,000 in additional income but claims a net operating loss carryover from 2019 sufficient to eliminate all or part of the liability. However, the department disallows the net operating loss carryover and issues a proposed assessment to Individual B. Individual B can protest the net operating loss disallowance. However, the $20,000 in additional income from the partnership adjustment is final.

For purposes of determining a change resulting from a department-initiated adjustment, the department will follow the taxable year in which the adjustments would have actually occurred had the partnership filed the return properly. However, if the change is treated as occurring in a different taxable year for federal purposes, the department will follow the different treatment required under federal law.

Example #6: Indiana conducts an audit of a partnership without regard to a federal partnership audit and determines that, for 2020, the partnership classified a loss of $1,000 as an ordinary loss when it should have been a long-term capital loss. The partnership has no long-term capital gains for 2020. The department will make any adjustments for the partnership based solely on readjusting the 2020 taxable year attributes.

Example #7: Same facts as Example 6 except that the Internal Revenue Service made the adjustment for the 2020 taxable year and made the adjustment such that the $1,000 increase in ordinary income is treated as occurring in 2020 and that $1,000 capital loss occurring in 2020 is treated for federal purposes as occurring in the adjustment year of 2023. Indiana will treat (1) the increase in ordinary income as occurring in 2020 (See the section on Adjustments from Federal Changes below) and (2) the $1,000 capital loss as occurring in 2023.

Amended Returns

If a partnership determines that it did not report an attribute correctly for one or more partners, the partnership shall file an amended IT-65 return to report the corrected adjustments and supply its partners with amended K-1s reporting the adjustments along with any additional information necessary for the partners to process their adjustments. The partnership is also responsible for remitting any composite tax due and PTET at the time of the amended IT-65.

For purposes of direct and indirect partners, the same general timetables discussed in the section on Department-Initiated Changes apply. However, instead of the date being 90 days from the date of the ROFPA, the timetable for direct and indirect partners begins immediately with the partnership's filing of an amended return. Thus, pass-through entities have 30 days from the receipt of an amended K-1 from an upstream partnership to file their own amended returns, provide amended K-1s reporting the adjustments, and remit any composite tax and PTET that may be due from them, while a partner has 90 days from receipt of the last K-1 to file an amended return and remit any tax that is due from them.

Credits can be taken into account either in computing the composite withholding tax due or as the final step in the computation, but not both places. In the case of an adjustment that affects the PTET, credits cannot be used to offset the PTET due from the partnership.

Adjustments from Federal Changes

For Indiana purposes, a partnership is generally required to report changes resulting from a federal partnership-level audit by filing an amended partnership return, filing amended composite and PTET schedules, remitting any composite tax and PTET due, and providing partners with amended K-1s in the manner provided in the section on Department-Initiated Changes and Amended Returns above. The amended partnership return resulting from federal changes must be filed with the department within 180 days of the partnership's receipt of federal audit changes. This includes the remittance of any composite tax and PTET due as well as providing direct partners with K-1s. A copy of the federal audit changes should be filed with the department along with the amended return. An amended return should be filed regardless of whether the changes are distributed down to the partners of the partnership for federal purposes unless:

1. The partnership is not subject to partnership-level audit treatment at the federal level, and
2. The federal audit changes are made at the partner level.

For purposes of reporting partnership adjustments, the year for which the adjustment relates for federal purposes will determine the taxable year for which the Indiana return must be adjusted.

Example # 8: Partnership A is audited for federal purposes for the 2020 tax year. The effect of the federal adjustment is to reallocate an ordinary loss for 2020 to a long-term capital loss. The effect under federal rules is to treat the capital loss as if it occurred in the adjustment year of 2022. Indiana will follow the reallocation of income for 2020 to increase ordinary income (i.e., disallow an ordinary loss) and also treat the capital loss as a 2022 capital loss.

Example #9 Partnership claimed employee wages as a business expense for 2021. However, the partnership filed a claim for a COVID-related employee retention credit for the 2021 tax year, which has the effect of reducing the wages claimed as a deduction for federal purposes. The partnership reports the increased tax in 2023 and pays interest from the due date of the 2021 return to March 15, 2023. For Indiana purposes, the adjustment will be considered to occur in 2021 and will be reported for the 2021 tax year. In addition, the Indiana-specific deduction to permit the federally-disallowed wages will be reported as occurring in taxable year 2021.

However, certain adjustments may be treated as being carried to more than one year based on an Indiana-specific adjustment. These largely relate to adjustments where Indiana has delayed or accelerated recognition of a deduction such as depreciation or interest.

Example #10: Partnership has property that it reported as having a basis of $100,000 and for which it claimed full bonus depreciation in 2020. The property has a property life of five years, subject to double-declining balance depreciation. The partnership modified its bonus depreciation by reporting an $80,000 addback in 2020 and a $32,000 subtraction in 2021.

The Internal Revenue Service conducts an audit reducing the basis to $70,000, thus resulting in $30,000 of income for federal purposes treated as occurring in 2020. For Indiana purposes, this will be reported as $30,000 of increased income for 2020, a reduction in the depreciation addback of $24,000 for 2020 ($80,000 previous addback minus $56,000 addback based on a $70,000 basis), and a reduction of the 2021 subtraction of $9,600 ($32,000 previous depreciation minus $22,400 revised depreciation). The remaining Indiana depreciation will be computed based on $70,000, which will account for the $14,400 remaining difference over the lifetime of the property).

Partnership Representatives

For any partnership that is the subject of a federal or state audit, the partnership must designate a partnership representative to act on behalf of the partnership. If the partnership has designated a federal partnership representative, that entity and any designated individual(s) are presumed to be the state partnership representative(s) unless the partnership designates otherwise.

For a state partnership representative, the partnership representative must meet each of the following:

1. The partnership representative has a United States taxpayer identification number.
2. The partnership representative has a United States mailing address and telephone number with a United States area code.
3. The partnership representative must be available to meet in person with the department at any reasonable time and place determined by the department (including administrative hearings) and must provide or make available any books or records of the partnership upon request by the department.
4. If the partnership representative is an entity, the partnership must designate one or more individuals from the entity to act on behalf of the partnership. Those individuals must also meet the requirements set forth in (1) through (3) above.

The partnership representative has the sole power to act on behalf of the partnership, including representation before the department in audits and administrative hearings, entering into settlement agreements, and elections for the partnership to be taxed at the partnership level. Any actions by the partnership representative are binding on the partnership as well as the direct and indirect partners of the partnership.

Failure to Provide Timely Reports or Statements

If any entity required to provide amended statements or PLARs does not provide the amended statements or PLARs in a timely manner, the entity is subject to tax at the entity level. The tax will be imposed on the entity at the highest rate imposed under Indiana law unless any of the following apply

1. the department determines that a lower rate should apply to one or more direct or indirect partners, in which case the assessment shall be reduced to the rate on that partner.
2. the partnership determines that a lower rate should apply to one or more direct or indirect partners, in which case the assessment shall be reduced to the rate on that partner.
3. the department determines that a direct or indirect partner has already remitted tax on the relevant adjustment, in which case the assessment against the entity will be eliminated.

This imposition applies not only to partnerships but also to S corporations, estates, and trusts. The imposition is discretionary on the part of the department and does not relieve any entity of providing forms and schedules or filing amended returns.

If tax is imposed on an entity pursuant to this provision, the tax is treated as a withholding credit to the entity's owners or beneficiaries. The owners and beneficiaries are not relieved of further filing and remittance duties except as otherwise provided by law (e.g., a pre-April 30, 2023 partnership election).

In addition, if the department issues a ROFPA more than 180 days after the date on which adjustments to a ROFPA become finalized, each partnership or tiered partner is granted as additional day for each day the ROFPA is late.

Example #11: The department issues a ROPPA. Upon appeal, the partnership successfully appeals a portion of the adjustments. The department issues the ROFPA 185 days after the adjustments become final. The partnership will not be subject to the tax under this section if it issues the PLARs within 95 days (90 days plus 5 days that the ROFPA was late). In addition, any tiered partner has 35 days as opposed to 30 days to issue amended statements. However, if the partnership files a later amended return, the 90 days and 30 days for tiered partners is not extended for statements related to that amended return.

For purposes of not providing schedules or reports, if an entity issues a statement or report to an address that it knows is not valid, the entity will be considered to have not issued the statement or report in a timely manner. In addition, an entity will be considered to have not issued a statement or report in a timely manner if the statement or report if the entity does not take reasonable steps to determine a valid mailing address for the statement or report.

Example #12: Partnership A files an amended return for 2020 and issues an amended K-1 to Individual B. The statement is returned to Partnership A on May 31, 2022. Partnership A makes reasonable efforts to find Individual B's address, including referral to national third-party database and other standard means for attempting to find a new mailing address. Partnership A cannot determine an address. Partnership A will be considered to have sent the amended K-1 to Individual B.

However, if Partnership A had made no effort or only a cursory search (e.g., a search on an internet search engine), Partnership A will be considered to have not sent the amended K-1 to Individual B.

If a partnership or other pass-through entity does not issue a statement or report in a timely manner, any person or entity affected by the delay(s) will be permitted an extension in accordance with the period of delayed receipt of the statement or report.

Highest Tax Rate

For purposes of determining the highest tax rate for state (or combined state and local purposes) for a particular period, the following rates shall be used:

Nov. 2, 2015-Dec. 31, 2015	7.50%
Jan. 1, 2016-Dec. 31, 2016	7.00%

Jan. 1, 2017-Dec. 31, 2019	6.61%
Jan. 1, 2020-Dec. 31, 2020	6.4775%
Jan. 1, 2021-Dec. 31, 2021	6.13%
Jan. 1, 2022-Dec. 31, 2022	6.23%
Jan. 1, 2023-Dec. 31, 2023	6.15%
Jan. 1, 2024 and later	6.05%

For purposes of determining the highest LIT rates, the following rates shall be used for resident individuals:

Nov. 2, 2015-Dec. 31, 2015	3.13%
Jan. 1, 2016-Dec. 31, 2019	3.38%
Jan. 1, 2020-Dec. 31, 2020	3.2475%
Jan. 1, 2021-Dec. 31, 2021	2.90%
Jan. 1, 2022 and later	3.00%

For purposes of determining the highest LIT rates, the following rates shall be used for nonresident individuals:

Nov. 2, 2015-Dec. 31, 2016	1.46%
Jan. 1, 2017-Dec. 31, 2019	3.38%
Jan. 1, 2020-Dec. 31, 2020	3.2475%
Jan. 1, 2021-Dec. 31, 2021	2.90%
Jan. 1, 2022 and later	3.00%

Extensions

As a general rule, a partnership, direct partner, or indirect partner, and the department are permitted to extend any deadline and statute of limitation related to partnership adjustments. However, the first extension must be agreed to prior to the expiration of the statute of limitations or deadline for action otherwise set forth by statute. Any subsequent extensions must be agreed to prior to the expiration of the most recent extension. Any extension is subject to the requirement that the person or entity requesting the extension keep all books and records for the period covered by the extension.

If a partnership and the department agree to an extension, any deadlines and statutes of limitations for lower-tier partners are extended in a similar manner to reflect any extension. Thus, if a partnership requests an additional 30 days to issue a PLAR (i.e., from 90 days to 120 days), the partners receiving a PLAR will have 30 days or 90 days (depending on the partner) from that 120th day to complete all necessary actions. At this time, if an extension is entered into by an S corporation or trust, the extension does not create a further extension for shareholders or beneficiaries beyond any extension granted to a partnership.

In addition, any partnership with more than 10,000 direct partners is permitted an automatic 60-day extension for any actions required under IC 6-3-4.5 upon written request of the partnership prior to the deadline for the required action. Any request for an extension under this provision should include the name of the partnership and the following text:

> [Partnership, FEIN XX-YYYYYYY] is a partnership with [number of direct partners] direct partners. [Partnership] requests an automatic 60-day extension pursuant to IC 6-3-4.5-20(a)(1).
>
> [Signature and title of the partnership representative]

This request should be submitted to the following address:

> Indiana Department of Revenue
> Corporate Tax Administration
> P.O. Box 7206
> Indianapolis, IN 46207-7206

In addition, any request for an alternative calculation of tax due shall be extended automatically for 60 days beyond the deadline if the request is received less than 60 days prior to the deadline for the request. In the case of an alternative calculation arising from a department audit or review, this 60-day extension does **not** extend the 60 days for protesting a possible assessment.

Refunds

If an amended return (other than for federal audit adjustments) would result in a refund to a direct or indirect partner, the partner generally must file a refund claim within the statute of limitations otherwise provided for the partner to file a refund claim.

There are three notable exceptions to the rule stated above. First, if a refund is due for a taxable year as the result of federal audit adjustments, the partner has the period in which the partner is required to file the partner's amended return reporting the adjustments to also claim a refund. Second, if a partnership or other entity files an amended return and remits composite tax or PTET on the return on behalf of a partner, the partner may file a claim for refund on or before the date the partner's amended return is required to be filed. Third, if a partnership or partner remits tax in anticipation of final federal adjustments, the payor has 180 days from the date of the final federal adjustments to file a refund claim.

Statutes of Limitations

As part of the changes to the partnership audit and amendment regime, several statutes of limitations and reference dates were adjusted.

For changes resulting from a department audit or adjustment, IC 6-3-4.5-14 provides generally that timely compliance with the statute of limitations for a proposed assessment is based on the department's issuance of a ROPPA. The department is required to issue a ROPPA no later than the latest of:

1. 3 years after the due date of the partnership's return, including any valid extension granted under IC 6-8.1-6-1.
2. 3 years after the date the partnership's return is filed with the department;
3. in the case of the partnership's underreporting of its adjusted gross income by more than 25%, the periods provided in (1) and (2) is 6 years.
4. if the partnership fails to file a return required under IC 6-3-4-10, files a fraudulent return, or files a substantially blank return, there is no statute of limitations.
5. in the case of a report of proposed partnership adjustments arising from final federal adjustments, 180 days after the date on which the department receives the final federal adjustments from the partnership in the manner prescribed by the department or December 31, 2021, whichever is later.
6. in the case of a report of proposed partnership adjustments issued to a tiered partner that is a partnership as a direct or indirect result of another partnership's report of final partnership adjustments, final federal adjustments, or an amended return, one hundred eighty (180) days after the applicable deadline for the tiered partner (i.e., the date on which the tiered partner is required to file an amended return) or the date otherwise determined under for the partnership.

In the case of a direct or indirect partner that has been issued a PLAR or report arising from a PLAR, and does not report the proper amount of tax due, the department is required to issue an assessment no later than the latest of:

1. 180 days after the date the department receives the PLAR from the audited partnership.
2. 180 days after the applicable deadline for the direct or indirect partner.
3. The statute of limitations for the direct or indirect partner under IC 6-8.1-5-2.

In the case of a direct or indirect partner who is required to report tax based on an amended return, the statute of limitations is 180 days from the applicable deadline for the direct or indirect partner or the statute of limitations otherwise applicable to that direct or indirect partner, whichever is later.

If a partner in a partnership that has passed the adjustments through to its partners for federal tax purposes, the partner also will be considered to have received federal audit adjustments for purposes of determining the statute of limitations for assessment. In other words, if the partner fails to file an amended return or files the return more than 270 days from the partnership’s due date (subject to additional time for tiered partners), the partner will be subject to the statute of limitations under IC 6-8.1-5-2 for not timely filing an amended return reporting federal audit adjustments.

In addition, in the case of a partnership for which the partnership is not subject to the federal partnership-level audit regime, the partner is liable for the federal adjustments made to the partner’s federal return and is subject to the reporting timing, filing, and payment requirements based on the partner’s return.

In the case of a partner that reports partnership attributes in an inconsistent manner from the partnership and is not described above, the statute of limitations follows the general statute of limitations rules under IC 6-8.1-5-2, except that the statute of limitations for assessments is the longer of the partnership's statute of limitations or the partner's statute of limitations.

If a partnership or other pass through entity is required to provide PLARs, reports, and/or amended statements and fails to do so in a timely manner, the statute of limitations for imposing additional tax at the highest amount possible against the partnership or other pass through entity is 3 years from the date the reports or statements are required to be issued. However, if a taxpayer cannot file a return or issue a statement in a timely manner, the period in which that taxpayer can do so is extended until the delinquent entity responds.

If you have any questions concerning this bulletin, contact the Tax Policy Division at taxpolicy@dor.in.gov.

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