



[CLICK HERE](#) to return to the home page

R.I. Gen. Laws, Sections 44-11-2.2 to 44-11-2.3

§ 44-11-2.2. Pass-through entities — Definitions — Withholding — Returns.

(a) Definitions.

(1) "Administrative adjustment request" means an administrative adjustment request filed by a partnership under IRC section 6227.

(2) "Audited partnership" means a partnership or an entity taxed as a partnership federally subject to a partnership level audit resulting in a federal adjustment.

(3) "Direct partner" means a partner that holds an interest directly in a partnership or pass-through entity.

(4) "Federal adjustment" means a change to an item or amount determined under the Internal Revenue Code (IRC) that is used by a taxpayer to compute Rhode Island tax owed whether that change results from action by the IRS, including a partnership level audit, or the filing of an amended federal return, federal refund claim, or an administrative adjustment request by the taxpayer. A federal adjustment is positive to the extent that it increases state taxable income as determined under Rhode Island state laws and is negative to the extent that it decreases state taxable income as determined under Rhode Island state laws.

(5) "Final determination date" means if the federal adjustment arises from an IRS audit or other action by the IRS, the final determination date is the first day on which no federal adjustments arising from that audit or other action remain to be finally determined, whether by IRS decision with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the IRS and the taxpayer, the final determination date is the date on which the last party signed the agreement.

(6) "Final federal adjustment" means a federal adjustment after the final determination date for that federal adjustment has passed.

(7) "Indirect partner" means a partner in a partnership or pass-through entity that itself holds an interest directly, or through another indirect partner, in a partnership or pass-through entity.

(8) "Member" means an individual who is a shareholder of an S corporation; a partner in a general partnership, a limited partnership, or a limited liability partnership; a member of a limited liability company; or a beneficiary of a trust;

(9) "Nonresident" means an individual who is not a resident of or domiciled in the state, a business entity that does not have its commercial domicile in the state, and a trust not organized in the state.

(10) "Partner" means a person that holds an interest directly or indirectly in a partnership or other pass-through entity.

(11) "Partnership" means an entity subject to taxation under Subchapter K of the IRC.

(12) "Partnership level audit" means an examination by the IRS at the partnership level pursuant to Subchapter C of Title 26, Subtitle F, Chapter 63 of the IRC, as enacted by the Bipartisan Budget Act of 2015, Public Law 114-74, which results in Federal Adjustments.

(13) "Pass-through entity" means a corporation that for the applicable tax year is treated as an S Corporation under IRC § 1362(a) [26 U.S.C. § 1362(a)], and a general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation for federal tax purposes under the state's check-the-box regulation.

(14) "Tiered partner" means any partner that is a partnership or pass-through entity.

(b) Withholding.

(1) A pass-through entity shall withhold income tax at the highest Rhode Island withholding tax rate provided for individuals or seven percent (7%) for corporations on the member's share of income of the entity that is derived from or attributable to sources within this state distributed to each nonresident member and pay the withheld amount in the manner prescribed by the tax administrator. The pass-through entity shall be liable for the payment of the tax required to be withheld under this section and shall not be liable to the member for the amount withheld and paid over in compliance with this section. A member of a pass-through entity that is itself a pass-through entity (a "lower-tier pass-through entity") shall be subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier pass-through entity to each of its nonresident members. The tax administrator shall apply tax withheld and paid over by a pass-through entity on distributions to a lower-tier pass-through entity to the withholding required of that lower-tier pass-through entity.

(2) A pass-through entity shall, at the time of payment made pursuant to this section, deliver to the tax administrator a return upon a form prescribed by the tax administrator showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the tax administrator may require. A pass-through entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record

of the amount of tax withheld on behalf of the member on a form prescribed by the tax administrator.

(c) Notwithstanding subsection (b), a pass-through entity is not required to withhold tax for a nonresident member if:

- (1) The member has a pro rata or distributive share of income of the pass-through entity from doing business in, or deriving income from sources within, this state of less than \$ 1,000 per annual accounting period;
- (2) The tax administrator has determined by regulation, ruling, or instruction that the member's income is not subject to withholding;
- (3) The member elects to have the tax due paid as part of a composite return filed by the pass-through entity under subsection (d); or
- (4) The entity is a publicly traded partnership as defined by 26 U.S.C. § 7704(b) that is treated as a partnership for the purposes of the Internal Revenue Code and that has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the tax administrator of each unitholder with an income in the state in excess of \$ 500.

(d) Composite return.

- (1) A pass-through entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax at the state's highest marginal rate on the members' pro rata or distributive shares of income of the pass-through entity from doing business in, or deriving income from sources within, this State.
- (2) A nonresident member whose only source of income within a state is from one or more pass-through entities may elect to be included in a composite return filed pursuant to this section.
- (3) A nonresident member that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the pass-through entity.

(e) Partnership level audit.

(1) A partnership shall report final federal adjustments pursuant to IRC section 6225(a)(2) arising from a partnership level audit or an administrative adjustment request and make payments by filing the applicable supplemental return as prescribed under § 44-11-2.2(e)(1)(ii), and as required under § 44-11-19(b), in lieu of taxes owed by its direct and indirect partners.

- (i) Failure of the audited partnership or tiered partner to report final federal adjustments pursuant to IRC section 6225(a) and 6225(c) or pay does not prevent the tax administrator from assessing the audited partnership, direct partners, or indirect partners for taxes they owe, using the best information available, in the

event that a partnership or tiered partner fails to timely make any report or payment required by § 44-11-19(b) for any reason.

(ii) The tax administrator may promulgate rules and regulations, not inconsistent with law, to carry into effect the provisions of this chapter.

§ 44-11-2.3. Pass-through entities — Election to pay state income tax at the entity level.

(a) Definitions. As used in this section:

(1) "Election" means the annual election to be made by the pass-through entity by filing the prescribed tax form and remitting the appropriate tax.

(2) "Net income" means the net ordinary income, net rental real estate income, other net rental income, guaranteed payments, and other business income less specially allocated depreciation and deductions allowed pursuant to § 179 of the United States Revenue Code (26 U.S.C. § 179), all of which would be reported on federal tax form schedules C and E. Net income for purposes of this section does not include specially allocated investment income or any other types of deductions.

(3) "Owner" means an individual who is a shareholder of an S Corporation; a partner in a general partnership, a limited partnership, or a limited-liability partnership; a member of a limited-liability company, a beneficiary of a trust; or a sole proprietor.

(4) "Pass-through entity" means a corporation that for the applicable tax year is treated as an S Corporation under I.R.C. 1362(a)(26 U.S.C. § 1362(a)), or a general partnership, limited partnership, limited-liability partnership, trust, limited-liability company or unincorporated sole proprietorship that for the applicable tax year is not taxed as a corporation for federal tax purposes under the state's regulations.

(5) "State tax credit" means the amount of tax paid by the pass-through entity at the entity level that is passed through to an owner on a pro rata basis.

(b) Elections.

(1) For tax years beginning on or after January 1, 2019, a pass-through entity may elect to pay the state tax at the entity level at the rate of five and ninety-nine hundredths percent (5.99%).

(2) If a pass-through entity elects to pay an entity tax under this subsection, the entity shall not have to comply with the provisions of § 44-11-2.2 regarding withholding on non-resident owners. In that instance, the entity shall not have to comply with the provisions of § 44-11-2.2 regarding withholding on non-resident owners.

(c) Reporting.

(1) The pass-through entity shall report the pro rata share of the state income taxes paid by the entity which sums will be allowed as a state tax credit for an owner on his or her personal income tax return.

(2) The pass-through entity shall also report the pro rata share of the state income taxes paid by the entity as an income (addition) modification to be reported by an owner on his or her personal income tax returns.

(d) State tax credit shall be the amount of tax paid by the pass-through entity, at the entity level, which is passed through to the owners, on a pro rata basis.

(e) A similar type of tax imposed by another state on the owners' income paid at the state entity level shall be deemed to be allowed as a credit for taxes paid to another jurisdiction in accordance with the provisions of § 44-30-18.

(f) "Combined reporting" as set forth in § 44-11-4.1 shall not apply to reporting under this section.