

NEW JERSEY DIVISION OF TAXATION

TECHNICAL BULLETIN

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TOPIC: PARTNERSHIP FILING FEE AND NONRESIDENT PARTNER TAX

PARTNERSHIP FILING FEE

If a partnership has 3 or more owners and New Jersey source income or loss, it must pay a \$150 per owner filing fee (to a maximum of \$250,000), subject to a few exceptions discussed below. The filing fee must be paid by the original due date for the NJ-1065 tax return. Along with the filing fee, one-half of the fee amount must be paid as a prepayment of the next year's filing fee. No other installment payments are required for the partnership filing fee. (The partners, however, are still subject to applicable estimated tax requirements.)

DUE DATE (No Extensions) –The partnership filing fee must be paid by the original due date of the partnership return. There is no extension for payment of the partnership filing fee, even if the partnership has an extension for the filing of the partnership return. If the filing fee is not paid by the due date for the partnership return (e.g., April 15th for a calendar year partnership), the partnership will be assessed late payment penalties and interest for the filing fee.

AMOUNT DUE – Partnerships must pay \$150 for each individual, trust, estate or entity, including any “pass-through” entity, that owns a partnership interest, plus one-half of the tax year's filing fee as the prepayment towards the next year's filing fee. Nonprofit owners are **not** exempt from the fee. The total fee amount due is generally determined by the number of K-1's filed by (or due from) the partnership, including when a qualified investment partnership, tiered partnership or pass-through entity is involved. The fee is due for owners that are not provided a K-1. With regard to tiered partnerships, each partnership pays the filing fee required for its partners.

Since one purpose of the filing fee is to cover processing costs, there is no exemption or pro-ration of the fee for partners who own an interest for only a portion of the year. Similarly, there is no pro-ration for the fee if the partnership was in existence for only part of the tax year for which the NJ-1065 is due. If a partnership dissolves shortly after the end of a tax year, before filing the return for that tax year, the filing fee is due for that tax year, plus ½ of that fee as the prepayment towards the next year's filing fee (the next tax year being a partial year.) When “Final Return” is checked off on the NJ-1065 return, no prepayment of the next year's fee is required (however, the filing fee for the final return is required.)

If a partnership has nonresident partners, the full \$150 filing fee is due for each nonresident partner that has physical nexus with New Jersey. If the partnership has income earned outside New Jersey, the filing fee for nonresident partners that do not have

physical nexus with New Jersey may be apportioned based on New Jersey source income. (See NJ-1065 for the New Jersey corporate allocation factor to apply for the nonresident partners lacking nexus.) The amount due as the prepayment or installment for the next year is ½ of the fee due for the current filing.

FILING FEE EXCEPTIONS:

No New Jersey source income. To qualify for this exception, all operations and facilities must be located outside New Jersey. Generally, if the partnership has New Jersey source expenses, deductions or losses, it will not qualify for this exception. For example, if a partnership owns “raw” land in New Jersey, the partnership has New Jersey source income or expense due to expenses such as real property taxes. On the other hand, fees paid for a New Jersey checking account or to a New Jersey accounting firm are not sourced to New Jersey, for purposes of liability for the filing fee. Similarly, the fee paid for filing an annual report in New Jersey, without more, will not be sourced to New Jersey for purposes of filing fee liability. If a partnership has hedge fund status (see criteria below), a filing fee is due for nonresident individual, trust or estate partners, unless all operations and facilities are located outside New Jersey and the nonresident partners have no contact with New Jersey.

Partnership is an Investment Club. If the partnership meets the definition of “investment club” (see definition below), the partnership is exempt from all filing fee requirements.

NONRESIDENT PARTNER TAX

Partnerships must pay a tax on behalf of nonresident partners that have New Jersey-allocated income. If the partner is an individual, trust or estate, the tax is 6.37% of the New Jersey allocated income of all the nonresident partners. If the partner is a corporate partner or another partnership, the tax is 9% of the New Jersey allocated income of the corporate partners. (See NJ-1065 for determining the allocation factor.) Income cannot be allocated outside New Jersey (all income is New Jersey source income) if the partnership has no place of business outside New Jersey.

DUE DATE (No extensions) - The tax must be paid by the original due date for filing the NJ-1065. No additional payment towards the next year’s tax is required. Also, no quarterly installments are required; however, the nonresident partners are subject to estimated tax requirements. When a nonresident partner files a New Jersey income tax return, such as an NJ-1040NR or CBT-100, the partner must attach a copy of the partner’s NJ K-1 to take a credit for tax paid by the partnership on the partner’s behalf.

Generally, if a partnership files a composite return and has made estimated payments on a timely, quarterly basis for the composite return, the partnership is not required to pay the nonresident partner tax for the nonresident partners filing compositely. With regard to tiered partnerships, each partnership pays the tax required for its nonresident partners.

NONRESIDENT PARTNER TAX EXCEPTIONS –

The following types of partnerships are exempt from the nonresident partner tax:

- 1) *A partnership listed on a United States national stock exchange.*
- 2) *A partnership that is a “qualified investment partnership.”* To meet the definition of qualified investment partnership, it must have more than 10 members or partners (for a limited exception to this requirement, see N.J.A.C. 18:7-1.21); no member or partner may own more than a 50% interest in the entity; and it must derive at least 90% of its gross income from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stocks, securities, foreign currencies or commodities or other similar income (including but not limited to gains from swaps, options, futures or forward contracts) derived with respect to its business of investing or trading in those stocks, securities, currencies or commodities. The term “qualified investment partnership” does not include a “dealer in securities” within the meaning of 26 U.S.C. s. 1236.
- 3) *A partnership that is an investment club.* To meet the definition of investment club, the entity must meet these criteria: be classified as a partnership for federal income tax purposes; all of the owners must be individuals; all of the assets must be securities, cash or cash equivalents; the market value of the total assets must not exceed the lesser of \$36,300 per owner or \$258,900 (for tax year 2004, with amounts subject to an annual inflation adjustment); and the entity is not required to register itself or its membership interests with the federal Securities and Exchange Commission.
- 4) *No income is allocated to New Jersey.* To qualify for this exception, all operations and facilities must be located outside New Jersey.

A partnership is not required to pay the nonresident partner tax for the following types of partners:

- 1) *An IRC 503(c)(3) entity or a corporate partner that is exempt from the Corporation Business Tax*, such as a nonprofit corporation. (See N.J.S.A. 54:10A-3 for a list of exempt corporations.) Corporations claiming this exemption must complete Form NJ-1065E and file it with the partnership’s records. The form should be retained in the partnership’s files and not filed with the return. If the partnership pays the nonresident partner tax for an exempt entity, the exempt entity may file a claim for refund, which must include proof that payment of the tax was made.
- 2) *A corporate partner that has a regular place of business in New Jersey.* Regular place of business refers to a bona fide office (other than a statutory office), factory, warehouse, or other space of the corporation that is regularly maintained, occupied and used by the corporation in carrying on its business and in which one or more regular employees are in attendance. The “regular place of business” must be owned or rented by the corporation (the cost being born directly by the corporation and not by a related entity or person.) Corporations claiming this exemption must complete Form NJ-1065E and file it with the partnership.

3) *An individual, trust or estate partner of a partnership that qualifies for hedge-fund status.* For hedge-fund status, the partnership's only activities may be the purchase, holding and sale of intangible personal property, such as securities or commodities (defined in 26 U.S.C. s. 475(c)(2) and (e)(2)), and such intangible personal property may not be held for sale to customers. The activities of "purchase, holding and sale" include activities incidental thereto giving rise to income, including commitment fees, breakup fees and income from securities lending.

PAYMENT FORMS FOR FILING FEE AND NONRESIDENT PARTNER TAX

The partnership filing fee and the nonresident partner tax are remitted with Form PART-100, Partnership Return Voucher. If a partnership files the NJ-1065 on extension, the partnership must timely pay its liabilities for the filing fee or nonresident partner tax by filing a Form PART-200-T "Partnership Tentative Return and Application for Extension of Time to File." Payment must be included with the form, and the envelope must be postmarked by the original due date for the return (the 15th day of the fourth month following the close of the partnership's tax year). The forms are part of the NJ-1065 packet. Also, forms may be downloaded from the Division's website, www.state.nj.us/treasury/taxation, or ordered by calling 1-800-323-4400.

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