

**Vermont Department of Taxes
TECHNICAL BULLETIN**

TAX: INCOME

TB-06

**SUBJECT: ESTIMATED PAYMENTS BY S
CORPORATIONS, PARTNERSHIPS
AND LIMITED LIABILITY COMPANIES
ON BEHALF OF SHAREHOLDERS,
PARTNERS AND MEMBERS**

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This technical bulletin addresses some frequently asked questions regarding the estimated tax payments required by 32 V.S.A. §§ 5914 and 5920. It supplements TB-05.

(1) A Vermont partnership or limited liability company with nonresident owners or partners has as its only assets interest bearing accounts or stock brokerage accounts earning dividends. The sole purpose of the entity is the management of these assets. Is the entity required to make estimated tax payments pursuant to 32 V.S.A. § 5914 or § 5920 on behalf of its nonresident members or partners?

The pro rata share of the dividends, interest, and gains on marketable securities passed through to nonresident owners or partners does not constitute Vermont income in the hands of these individuals and is not subject to Vermont individual income tax. See 32 V.S.A. § 5823(b). The partnership or limited liability company is not required to make estimated payments on behalf of its nonresident members or partners. The partnership or limited liability company will be subject to the minimum tax of \$250 imposed by 32 V.S.A. § 5921.

(2) A Vermont partnership with Vermont income is owned in part by an S corporation domiciled outside of Vermont. The S corporation has both Vermont and nonVermont shareholders. How do the estimated tax provisions of 32 V.S.A. § 5920 apply?

The partnership must make estimated tax payments on behalf of its nonresident partner, the S corporation, at the second lowest marginal rate¹. The estimated payments made by the partnership on behalf of its nonresident partners may be credited against the estimated tax liability of the S corporation. The nonresident shareholders may then each take credit for a pro rata share of the estimated tax on their Vermont individual income tax returns.

¹ In 2005, No. 207 (Adj. Sess.), § 2, eff. May 31, 2006 “next-to-lowest marginal tax rate” replaced “highest marginal tax rate.” The law change was effective for tax years beginning on and after January 1, 2006.

(3) Same facts as above except S Corporation is resident.

The partnership has no withholding obligation, but the S corporation must make estimated payments on behalf of its nonresident shareholders.

(4) A nonresident corporation operates in Vermont and also has a passive investment in a Vermont partnership. It currently files corporate returns reporting its operating income. Is the partnership required to make estimated tax payments on behalf of the corporation?

Yes, the partnership must make estimated tax payments on behalf of the corporation with respect to its investment income and the corporation must file corporate income tax estimates on its operating income.

(5) Under 32 V.S.A. § 5914, S corporations are required to declare and pay estimated tax with respect to each of its nonresident shareholders. How is residency determined when a shareholder is a business?

A business will be considered a resident business if that business is either formed under the laws of Vermont or has Vermont as its commercial domicile. Commercial domicile means the principal place from which the trade or business of the taxpayer is managed or directed.

(6) Is there a de minimus amount of income which does not trigger the estimated tax provisions of 32 V.S.A. §§ 5914 (S corporations) and 5920 (partnerships and limited liability companies)?

These sections of law do not provide for a de minimus. However, for the administrative convenience of both the pass-through entities making the estimated payments and the State of Vermont, the Department will accept payment of estimates on a composite return under certain circumstances. In order to be eligible for inclusion on a composite return, a nonresident shareholder, partner or member cannot have any income taxable to the State of Vermont other than that which is to be included in the composite return and cannot have income attributable to Vermont in excess of \$300,000. See Technical Bulletin 05 for prerequisites to filing composite returns. This option allows qualifying pass-through entities, which would otherwise have to file numerous estimated payment returns, to file only one return.

(7) If a nonresident is a partner in several Vermont partnerships, can the partner be included on a composite return or more than one composite return?

Yes, provided that the partner's income from all Vermont sources does not exceed \$300,000.

(8) Is an S corporation, partnership or limited liability company required to make estimated payments on behalf of a shareholder, partner or member who had no individual tax liability in the prior year?

Neither section 5914 nor 5920 specifically provide a safe harbor such as exists with regard to estimated tax payments by individuals. 32 V.S.A. § 5851 (Required annual payment means the lesser of 90 percent of the tax for such year or 100 percent of the tax shown on the taxpayer's return for the preceding tax year.) However, the Department has established an administrative "safe harbor" procedure to simplify the calculation of estimated tax payments due on or after April 15, 2005. See Technical Bulletin 05. Moreover, the law provides that if an S corporation, partnership or limited liability company shows to the satisfaction of the commissioner that interest or penalties have been assessed against it in excess of the interest or penalties which would have been applied against the combined actual tax liabilities of all nonresident shareholders, partners or members, the commissioner shall abate such excess interest and penalties. Therefore, although there is no authorization for making payments at less than the second lowest marginal rate, the entity would have no liability (after abatement) if the individuals' liabilities did not exceed the amount paid through estimates.

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