

January 22, 2007

<name>
<company>
<address>
<city, state zip>

Formal Ruling 2007-01

Dear <name>:

You have asked for a ruling regarding the application of 32 V.S.A. § 5914(c) to Vermont adjusted net capital gain income distributed by an S corporation to nonresident shareholders.

This ruling relies on facts provided in your letter of December 21, 2006. <Company> is an S corporation, operating in Vermont, with one or more shareholders who are not Vermont residents. Per § 5914(c) it is required to declare and pay estimated tax on behalf of the nonresident shareholders in an amount equal to the next-to-lowest marginal individual income tax rate (7.2%), multiplied by the shareholder's pro rata share of the income attributable to Vermont. <Company>'s income includes adjusted net capital gains as defined in Section 1(h) of the Internal Revenue Code and 32 V.S.A. § 5811(21)(B)(ii) (which excludes 40% of such gains from Vermont taxable income).

For the purposes of calculating the estimates required by § 5914(c), "income attributable to Vermont" excludes income that is, by statute, not taxable income in the hands of the shareholder. Therefore, the pro rata share of income attributable to Vermont should be reduced by 40% of the adjusted net capital gain before multiplying by 7.2%.

Please note that this ruling is based on the fact that 40% of capital gain income is excludable from the shareholders taxable income by law. <Company> could not, for example, exclude income based on the information it might have that the shareholder had offsetting losses, credits, or other attributes that would negate the tax on his or her pro rata share of its income.

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletion is attached, and you may request that within thirty (30) days the Commissioner delete any further information that might identify the interested parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

Section 808 of Title 3 provides that this ruling will have the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty days.

Sincerely,

George Phillips
Policy Analyst

Approved this ____ day of _____, 2006.

Tom Pelham
Commissioner of Taxes