

PERSONAL INCOME TAX BULLETIN 2010-03

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Abandonment, Dissociation or Withdrawal Related to a Partnership or LLC Interest

This bulletin describes the documentation that a partner or member (hereafter “taxpayer”) must submit to the Department of Revenue (“Department”) to substantiate an abandonment of an interest in, or a dissociation or withdrawal from, a pass-through entity (hereafter collectively referred to as “withdrawal”). For purposes of this bulletin, a pass-through entity means a partnership or limited liability corporation (“LLC”) treated as a partnership for Pennsylvania personal income tax purposes.

Important: This bulletin applies only if a taxpayer withdraws from a pass-through entity and the pass-through entity has continued to issue a Schedule K-1 to that taxpayer inconsistent with the taxpayer’s withdrawal.

A taxpayer claiming that he, she, or it has withdrawn from a pass-through entity **must submit to the Department the required documentation** described in **Section I** of this bulletin. The taxpayer must submit the required documentation in the first year that the taxpayer receives notice that the partnership has refused to recognize the taxpayer’s withdrawal.

Example. A taxpayer withdraws from a pass-through entity in year one and in year two receives a Schedule K-1 from the pass-through entity that is inconsistent with the taxpayer’s withdrawal. The taxpayer must submit the required documentation in year two immediately after receipt of the Schedule K-1.

Any taxpayer that has withdrawn from a pass-through entity at any time prior to issuance of this bulletin must submit the required documentation to the Department immediately.

Please refer to **Section II** for information explaining **where to submit the required documentation** and **the deadline** for submitting such information. A taxpayer’s failure to timely submit the required documentation may be considered as evidence that the claimed abandonment or withdrawal is invalid, and may result in disallowance of any claimed loss or deduction, or may result in inclusion of omitted partnership income.

Note: Submitting the required documentation (described below) does not guarantee that the Department will accept your filing position. The Department does not recognize a withdrawal if circumstances indicate the withdrawal was undertaken with a tax avoidance motive or that the withdrawal is not bona fide.

The Department may assess any time within in the statute of limitations; therefore, you may receive notice that the Department has not accepted your filing until several years after submitting the required documentation.

I. Required documentation.

A taxpayer must submit the following documentation to the Department to substantiate withdrawal from a pass-through entity:

1. A copy of any correspondence sent to the pass-through entity and/or its partners/members announcing the taxpayer's intention to withdrawal from the pass-through entity, as well as a copy of proof of mailing.
2. A copy of any newspaper publication or other document publicly announcing the taxpayer's withdrawal (if such publication is made).

The submission must reflect the date of publication. For example, if a taxpayer submits a newspaper publication, he, she or it also must include the portion of the newspaper page that contains the date. If the documentation was filed with the Secretary of State or similar governmental authority, the taxpayer must provide a copy of the filing and the taxpayer must provide a statement setting forth the date of the filing and the governmental authority with which the documentation was filed.

3. A copy of the pass-through entity's operating agreement or equivalent document and any amendments describing:
 - a. A taxpayer's right to withdrawal from the partnership or LLC;
 - b. The documentation necessary to substantiate such a withdrawal; and,
 - c. A taxpayer's rights upon withdrawal.
4. A citation to state law governing a taxpayer's right to and/or obligations upon withdrawal.
5. A statement of the withdrawing taxpayer's allocable share of the pass-through entity's income, losses, and liabilities. If the taxpayer's liabilities are reduced on account of the withdrawal, the taxpayer must provide a description of the nature (recourse or nonrecourse) and amount of the liabilities.
6. A statement from the pass-through entity describing the increase to each remaining partners' or member's share of pass-through entity's income, loss, and liabilities resulting from such withdrawal. If the pass-through entity refuses to provide this statement, the taxpayer must provide a copy of any request send to the pass-through entity. Further, the taxpayer must provide any information available to taxpayer that will assist the Department in determining such increase.
7. A statement by the taxpayer describing any family or related-party relationship between the abandoning taxpayer and the remaining partners or members, if the relationship is of one of the following types:

- a. Any of the remaining partner(s) or member(s) are the taxpayer's spouse, children, grandparents, grandchildren, or siblings;
 - b. Any of the remaining partner(s) or member(s) is/are a partnership, LLC, S Corporation, corporation, or other entity owned greater than 50% by taxpayer or owned greater than 50% by a person described in 7.a, above, or owned in the aggregate greater than 50% by person(s) described in 7.a, above.
8. A statement of whether the taxpayer has, since the date of withdrawal, reported any pass-through entity gains/losses on his, her or its Federal income tax return or on any state income tax return.
 9. If the taxpayer received the pass-through entity ownership interest from a deceased partner, a statement describing the circumstances surrounding the transfer to the taxpayer and providing the date the pass-through entity interest was transferred to taxpayer.

II. Method of submitting documentation to the Department.

1. If the taxpayer's account has not yet been assessed and if the taxpayer does not have a petition for refund pending with the Board of Appeals for the year at issue, all required documentation must be submitted to the Department of Revenue at the following address (a hard copy is required even if the taxpayer otherwise files electronically with the Department):

Pass-Through Business Office
12th Floor Strawberry Square
Harrisburg, PA 17128-1240

Required documentation must be submitted within ten days after the taxpayer's individual return is filed or is required to be filed with the Department. A taxpayer who claims to have abandoned a pass-through entity interest prior to issuance of this bulletin must submit the required documentation to the Department **immediately**.

2. A taxpayer who is pursuing or intends to pursue a petition for reassessment or refund for the year of withdrawal must submit the required documentation to the Board of Appeals along with the taxpayer's petition. A taxpayer pursuing a petition for reassessment or refund is not required to submit the required documentation to the Pass-Through Business Office.

Important: If you have received an assessment notice from the Department for the year of withdrawal, you must timely file a petition with the Board of Appeals to preserve your appeal rights. Submitting the documentation to the Pass-Through Business Office or contacting any person in the Department to discuss the withdrawal or to send the required documentation will not extend or preserve your appeal period. For more information on petitions for reassessment or refund, please refer to the Board of Appeals' website at www.boardofappeals.state.pa.us.