

ARIZONA DEPARTMENT OF REVENUE

ARIZONA INDIVIDUAL INCOME TAX RULING

ITR 94-5

(On 7/26/2011 the reference to Arizona Form 140NPR was updated to Arizona Form 140NR. No substantive changes were made.)

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

What are the Arizona filing requirements for a qualifying unincorporated organization and its individual members that have elected exclusion from partnership treatment under Internal Revenue Code (I.R.C.) § 761(a)?

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 43-102 sets forth the legislative intent to adopt the provisions of the federal Internal Revenue Code.

A.R.S. § 43-1401.1 defines "Arizona gross income" of a partnership to mean its taxable income for the year, computed according to subtitle A, chapter 1, subchapter K of the Internal Revenue Code, exclusive of items requiring separate computation.

I.R.C. § 761(a) provides that the members of an unincorporated organization may elect to be excluded from application of subchapter K of the Internal Revenue Code (Partners and Partnerships).

Treasury Regulation (Treas. Reg.) § 1.761-2 provides rules for excluding an unincorporated organization from the application of the partner and partnership sections of the Internal Revenue Code.

DISCUSSION:

For federal income tax purposes, a qualifying syndicate, pool, joint venture, or similar organization may elect, under I.R.C. § 761(a), not to be treated as a partnership and will not be required to file a federal partnership return except for the year of election. A qualifying organization that makes such an election is not subject to the federal partnership and partner provisions contained in subchapter K of the Internal Revenue Code.

ARIZONA INDIVIDUAL INCOME TAX RULING

ITR 94-5

Page 2

For Arizona income tax purposes, an unincorporated organization is generally considered to be a partnership and is required to compute its income pursuant to subchapter K of the Internal Revenue Code. However, when a qualifying organization is not subject to the federal partnership provisions under subchapter K of the Internal Revenue Code, that organization is not subject to the Arizona partnership provisions. Therefore, when a valid federal election is made pursuant to I.R.C. § 761(a) and Treas. Reg. § 1.761-2, the department will recognize that election for Arizona purposes.

RULING:

When a qualifying organization makes a valid federal election pursuant to I.R.C. § 761(a) and Treas. Reg. § 1.761-2, the department will impose certain filing requirements on the qualifying organization and its individual members.

For the year of election the qualifying organization must file Arizona Form 165 with page one of the return completely filled out. If there is no distributive income and there are no additions to or subtractions from distributive income, zero should be entered on all lines of the partnership return. The organization must attach a copy of the valid federal election (federal Form 1065 and statement) required by Treas. Reg. § 1.761-2 to the Arizona Form 165. On the front page of the partnership return, the organization should make the notation "see attached federal election." The organization should also indicate that this partnership return is the organization's final partnership return.

The qualifying organization's individual members must file Arizona income tax returns if their income meets the Arizona filing requirements. If the individual member is an Arizona resident, that individual must file Arizona Form 140 reporting his or her share of the organization's income reported for federal purposes. If the individual is an Arizona nonresident, that individual must file Arizona Form 140NR reporting his or her share of the organization's Arizona source income to the extent it is included in federal adjusted gross income.

Harold Scott, Director

Signed: April 4, 1994

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information

ARIZONA INDIVIDUAL INCOME TAX RULING

ITR 94-5

Page 3

concerning the application of the law. **Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.