

23 VAC 10-130. TAXATION OF PARTNERSHIPS

~~23 VAC 10-130-10. Taxation of partnerships.~~

~~A partnership as such is not subject to income tax, but it is required to file an information return. Persons allocated income or deductions as partners are liable for Virginia income tax only in their separate or individual capacities. Persons may include individuals, estates and trusts, or corporations subject to Virginia income tax under §§58.1-320, 58.1-360, 58.1-391 and 58.1-400 of the Code of Virginia, respectively.~~

~~A. Distributive shares.~~

~~1. Separately stated items. In determining Virginia taxable income of a partner, any modification described in §58.1-322 of the Code of Virginia which relates to an item of partnership income, gain, loss or deduction shall be reported by the partnership, and each partner's distributive share of the modification shall be the same as the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. See 23 VAC 10-110-140 for the application of the modification to a partner's distributive share.~~

~~2. Income, gain, loss or deduction not taken into account separately. Where a Virginia modification is attributable to any category of income, gain, loss or deduction that is not required to be taken into account separately for federal income tax purposes, the partner's distributive share of such modification shall be determined in accordance with his distributive share, for federal income tax purposes, of partnership taxable income or loss. For example, a Virginia partnership invested in an obligation of the State of North Carolina. The partnership agreement provides that the two partners share equally in~~

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~~income and loss, but specifies different percentages with respect to certain items of income (other than interest income), deductions, credits and distributions of capital. The North Carolina interest must be reported as an addition on the Virginia partnership return. Because the North Carolina interest is not required to be separately stated for federal purposes, 50% of the addition would be distributed to each partner for Virginia purposes because their distributive shares of income/loss are equal.~~

~~3. Special allocations. If a Virginia modification is related to an item specially allocated by the partnership agreement, then the partner's distributive share of the Virginia modification shall be the same as the partner's distributive share for federal income tax purposes of the item to which the modification relates.~~

~~4. Character of item. Each item of partnership income, gain, loss or deduction has the same character for a partner for Virginia income tax purposes as for federal income tax purposes. Any item not characterized for federal income tax purposes will have the same character for a partner as if he had realized it directly without intervention of the partnership. For example, a Virginia partnership which owns a building in a foreign country may receive rent and may claim depreciation and other expenses which would be characterized as "other income" for federal income tax purposes. These items may qualify as "foreign source income" under §58.1-322 C 7 of the Code of Virginia and a partner may subtract his distributive share of such income as if the partner had received it directly.~~

~~B. Credit.~~

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~~1. Virginia Neighborhood Assistance Act. A tax credit is provided under the Virginia Neighborhood Assistance Act to businesses which invest in approved assistance projects designed to benefit low income individuals. The Act is administered by the Virginia Department of Social Services, which should be contacted for additional information.~~

~~The partnership must attach to its information return a copy of a statement from the Department of Social Services certifying the credit, as well as a statement specifying the amount of business credit allocable to each partner.~~

~~To claim the credit, a partner must attach to his individual income tax return a copy of a statement from the Department of Social Services certifying the credit. A statement from the partnership must also be attached to the individual return specifying the amount of the business credit allocable to that partner.~~

~~2. Urban Enterprise Zone credit. A tax credit is provided under the Virginia Urban Enterprise Zone Act to qualified business firms which derive income from conducting business in an urban enterprise zone. The Act is administered by the Virginia Department of Housing and Community Development, which should be contacted for additional information.~~

~~The partnership must attach to its information return a copy of a certificate of qualification to receive state tax incentives issued by the Department of Housing and Community Development, a Form 301, Urban Enterprise Zone Credit, as well as a statement specifying the amount of credit allocable to each partner.~~

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~~To claim the credit, each partner must attach to his individual income tax return a copy of the certificate of qualification received by the partnership, as well as a statement from the partnership specifying that partner's portion of the credit.~~

~~C. Nonresident partners.~~

~~1. The Virginia taxable income of partnerships doing business in Virginia and other states will be calculated in accordance with the statutory formula set forth in §§58.1-408 through 58.1-421 of the Code of Virginia, making such changes as necessary after considering the differences between corporations and partnerships. Any distribution to a partner which is self-employment income pursuant to IRC §§1401 et seq. shall be treated as salary for purposes of the payroll factor. Partnerships may make written application to the Tax Commissioner for permission to use an alternative procedure for allocation and apportionment.~~

~~2. Partnerships may make written application to the Tax Commissioner for permission to file a statement of combined partnership income attributable to nonresident partners and thereby relieve nonresident partners from filing individual nonresident returns. The application must state a reason for seeking such permission. The Tax Commissioner in his sole discretion may grant permission for good cause and upon such terms as the parties may agree.~~

~~A. Every partnership organized under the laws of Virginia, or having income from Virginia sources, must file with the Department of Taxation a Virginia return of partnership income. The return must be on forms prescribed by the Department and is~~

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~~due on or before the 15th day of the fourth month following the close of the partnership's taxable year. The report must be accompanied by a copy of any federal tax return or report (including schedules) filed for such taxable year.~~

~~B. The return of a partnership shall be signed by any one of the general partners. The fact that a partner's name is signed on the return is prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.~~

~~C. If the amount of the partnership's reported federal income is changed or corrected by the Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the partnership must report the change or correction to the Department within 90 days after the final determination of such change, correction, or renegotiation, and must concede the accuracy of such determination or state how it is erroneous.~~

~~Any partnership filing an amended federal information return for any taxable year must also file an amended Virginia return for such taxable year. The amended return must be filed within 90 days of the filing of the complementary federal amended return. For a definition of "final determination," see 23 VAC 10-20-180.~~

~~D. A partnership's taxable year for Virginia income tax purposes is the same as its taxable year for federal income tax purposes. If the partnership's taxable year is changed for federal purposes, its taxable year for Virginia must be similarly changed.~~

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~~23 VAC 10-130-40. Extension of time for filing return by partnership.~~

~~A. The Department will automatically extend the time within which any partnership is required by this chapter to make a report or return to the extent that an extension is granted for federal tax purposes for the same taxable year. To apply for an extension, a written request, accompanied by a copy of federal extension Form 2758, must be filed with the Department by the regular due date of the partnership return.~~

~~B. The Department may, for good cause shown, grant an extension. To apply, a written request setting forth the reasons for the extension must be filed with the Department by the due date of the report or return.~~

~~C. No extension will be granted beyond six months from the due date of a report or return.~~

~~23 VAC 10-130-50. Sections 58.1-448 through 58.1-452 applicable as follows to partnerships; penalty.~~

~~A. Forms to be furnished. The Department will mail duplicate blank forms of reports to the taxpayer at least 30 days before the time for filing returns, but failure to receive such forms will not release any partnership from the obligation of making any report required by law.~~

~~B. Supplemental reports. The Department may require a further or supplemental report from the partnership or any of the partners if further information or data is necessary for the computation of the tax herein provided.~~

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~~C. Failure of partnership to make report or return. Any partnership which fails to file any required report or return when due is subject to a penalty of not more than \$100, to be assessed and collected by the Department, in the manner provided for the assessment and collection of taxes under this chapter or in a civil action. A partnership also can be compellable by mandamus to make such report or return.~~

~~D. Fraudulent returns, etc., of partnerships; penalty. Any partner who makes a fraudulent return or statement with intent to evade the payment of Virginia income tax is liable to a penalty of not more than \$1,000, to be assessed and collected in the manner prescribed in 23 VAC 10-130-50 C.~~

~~E. Fraudulent returns; criminal liability. In addition to other penalties provided by law, it is a Class 1 misdemeanor for any partner to make a fraudulent return or statement with intent to evade the payment of Virginia income tax. A prosecution under this section shall be commenced within five years next after the commission of the offense.~~