

Your Guide to Backup Withholding for 2012

Idaho Code sections [63-3022L](#) and [63-3036B](#), amended by [2012 House Bill 582](#), address backup withholding for pass-through entities and the taxation of income from pass-through entities transacting business in Idaho. The new provisions give the pass-through entity the option of filing a composite return or withholding on the income of owners of an interest in a pass-through entity. The individual no longer makes an election to have the pass-through entity report and pay the tax on Idaho income.

1. Who is subject to backup withholding?

A pass-through entity (PTE) that is transacting business in Idaho or an estate or trust that has income taxable in Idaho must withhold Idaho income tax from the owner's or beneficiary's share of income and guaranteed payments from the PTE that is required to be included in the individual's Idaho taxable income unless exempt.

2. What is the backup withholding rate, and when is it due?

The PTE must withhold amounts from the pass-through income of nonresident individuals at the highest marginal rate applicable for the taxable year (7.4% for 2012). The amount withheld for a taxable year must be paid to the Tax Commission annually on or before April 15 for calendar year filers and the 15th day of the fourth month following the end of the taxable year for fiscal year filers.

3. What happens if the PTE withholds?

The PTE must file a withholding return or [Form PTE-01](#) (Idaho Income Tax Withheld for an Individual Nonresident Owner of a Pass-Through Entity) stating the amount of income, the amount of tax withheld, and any other information required by the Tax Commission. The entity must also furnish a statement to each individual stating the amount of tax withheld on behalf of the individual, using [Form ID K-1](#) (Partner's, Shareholder's, or Beneficiary's Share of Idaho Adjustments, Credits, Etc.).

4. Are there any exceptions to withholding?

Yes. Backup withholding is not required on the income of the following pass-through owners and beneficiaries:

- Owners and beneficiaries who aren't natural persons, including corporations, partnerships, trusts, and estates
- Unit holders of a publicly traded partnership as defined by Internal Revenue Code section 7404(b), if the publicly traded partnership:
 - Is treated as a partnership for purposes of the Internal Revenue Code; and
 - Has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit holder with a distributive share of partnership income in Idaho in excess of \$500 for the tax year

- Resident individuals
- Part-year individuals who have income other than from a PTE
- Nonresident individuals if:
 - The PTE has reported and paid the tax relating to the individual on a composite return
 - The individual's share of income from the PTE from Idaho sources is less than \$1,000 for the tax year in which the income is subject to tax
 - The income is subject to withholding under Idaho Code section 63-3035 or 63-3036
 - The individual has signed and the PTE has approved an Idaho nonresident owner agreement

5. What are the requirements for the Idaho nonresident owner agreement?

The [Form PTE-NROA](#), (Idaho Nonresident Owner Agreement) is used by a nonresident owner in order to be exempt from the required withholding. This agreement establishes that the taxpayer is required to file an Idaho income tax return, will report the Idaho source income and pay any Idaho tax due thereon, and will be subject to Idaho State Tax Commission enforcement and collection procedures. The forms are to be completed and signed by the nonresident owner and returned to the PTE. The PTE must approve the agreement for it to be valid. The PTE's approval will signify its acknowledgment that it is liable for any tax due at the corporate rate if the individual fails to file a return as agreed. If the PTE does not approve the nonresident owner agreement, the PTE must withhold or include the individual's income in the composite return. The agreement must be submitted to the PTE each year, and the PTE must retain the forms for three years following the end of the taxable year for which it is to apply. The agreement does not need to be completed by owners who will be included in the composite return of the PTE or Idaho residents who will file an Idaho return.

6. Is there an option other than backup withholding?

Yes. Idaho Code section [63-3022L](#) gives an additional option other than withholding for the Idaho nonresident. This code section states that the owner may have the tax relating to Idaho income reported and paid by the PTE on a composite return. The income on a composite return is taxed at the corporate rate (7.4% for 2012).

7. What is a composite return?

A composite return is a single return filed by a PTE on behalf of two or more nonresident owners. It allows the PTE to compute and report the income and tax attributable to nonresident shareholders or partners on a single tax return.

8. Are there other schedules that must be included with the PTE's Idaho composite income tax return?

A reconciliation schedule [Form PTE-12](#) (Idaho Schedule for Pass-Through Owners), including the following information, must be included with the composite return:

- The amount of income of each owner or beneficiary
- The amount of tax withheld or paid by the entity
- Name, address, Social Security number, and filing option of each owner or beneficiary
- The PTE's name and federal Employer Identification Number

9. What happens if the PTE fails to file a composite return or pay backup withholding?

If the PTE does not withhold and does not file a composite return, the PTE is liable for tax at the corporate rate. Failure to file a return or pay the proper amount of backup withholding may cause interest and penalties to be imposed. The penalties are outlined in Idaho Code sections [63-3046](#) and [63-3075](#).

10. What should be included in the computation of Idaho taxable income for an individual?

The following items must be included:

- Compensation paid by the PTE to the officer, director, owner, or beneficiary that is income from Idaho sources
- Pass-through items that are income from Idaho sources
- Distributable net income from an estate or trust that is income from Idaho sources

11. What deductions aren't allowed to be claimed by the PTE paying the tax on behalf of an individual?

The following items aren't allowed:

- Capital loss
- Net operating loss (NOL)
- Idaho capital gains deduction
- Information items
- Items not deductible under the Internal Revenue Code
- Items not reported as a pass-through deduction, including:
 - The standard deduction
 - Personal exemptions
 - Itemized deductions

12. Can the nonresident individual file a return and claim the amount withheld or paid by the entity as a credit?

Yes. The individual should include the income shown on the Idaho K-1 and will then be entitled to a credit for the tax withheld or paid by the entity on the income.

13. What Idaho forms should be used to report withholding?

- [Form PTE-01](#) (Idaho Income Tax Withheld for an Individual Nonresident Owner of a Pass-Through Entity) is the voucher used to accompany withholding tax payments to

the Tax Commission. A single payment may be submitted with a maximum of 250 PTE-01 vouchers.

- [Form PTE-12](#) (Idaho Schedule for Pass-Through Owners), is the reconciliation schedule to be included with the PTE's Idaho income tax return. The PTE's name, EIN, contact name, telephone and email are included on the form. Also included is a listing of the owners with addresses, Social Security numbers, owner's Idaho distributable income, income tax paid or withheld by the entity, and the filing option of the individual owner. The filing option box should have one of the following letters entered:
 - R if an Idaho resident or part-year resident
 - C if included in the composite return
 - N if exempt from withholding (income of less than \$1,000 or non-natural persons, such as corporations, partnerships, etc.)
 - W if the entity is paying withholding
 - A if the owner has signed an Idaho Nonresident Owner Agreement

By entering the "A" filing option, the PTE agrees that it has received and approved the nonresident owner agreement from the individual and acknowledges that it is liable for any tax due if the individual fails to file a return as agreed.

14. Is Idaho Form PTE-WX still required?

That form is no longer valid since the individual can no longer make an election. It is now the entity's decision whether to include nonresidents in a composite return or withhold tax. All information on the taxpayer is now included on [Form PTE-12](#) (Idaho Schedule for Pass-Through Owners).

Form-Specific Information for Backup Withholding

[Form 41S](#)

Line 40 should include amounts paid to those shareholders exempt from withholding (income of less than \$1,000) and amounts paid to non-natural persons (corporations, partnerships, trusts and estates). (PTE-12 code "N")

Line 41 should include amounts paid to residents, part-year residents, nonresidents with an ID Form PTE-NROA, and nonresidents that the entity withholds on. (PTE-12 codes "R", "A", and "W")

Line 42 should include amounts paid to shareholders that are included in the composite return. (PTE-12 code "C")

- Line 38, Net business income apportioned to Idaho
- + Line 39, Income allocated to Idaho
- Line 40, S Corporation income of shareholders exempt from backup withholding
- Line 41, S Corporation income of shareholders filing and reporting income to Idaho
- = Line 42, Taxable income

Form 65

Line 38 should include amounts paid to those partners exempt from withholding (income of less than \$1,000) and amounts paid to non-natural persons (corporations, partnerships, trusts and estates). (PTE-12 code “N”)

Line 39 should include amounts paid to residents, part-year residents, nonresidents with an ID Form PTE-NROA, and nonresidents that the entity withholds on. (PTE-12 codes “R”, “A”, and “W”)

Line 40 should include amounts paid to partners that are included in the composite return. (PTE-12 code “C”)

- Line 36, Net business income apportioned to Idaho
- + Line 37, Income allocated to Idaho
- Line 38, Partnership income of shareholders exempt from backup withholding
- Line 39, Partnership income of shareholders filing and reporting income to Idaho
- = Line 40, Taxable income

Partnership Example:

A partnership has income of \$15,500 distributed to the following partners:

- Resident with \$5,000
- Nonresident with \$500
- Nonresident with \$3,000 and files an ID PTE-NROA
- Nonresident with \$2,000 (withholding paid on PTE-01)
- Nonresident with \$5,000 (no withholding paid)

The nonresident with \$500 should be included in line 38 (PTE-12 code “N”). Line 38 total is \$500.

The resident with \$5,000 (PTE-12 code "R"), nonresident that files an ID PTE-NROA with \$3,000 (PTE-12 code "A"), and nonresident with \$2,000 and withholding paid (PTE-12 code "W") should all be included in line 39. Line 39 total is \$10,000.

The nonresident with \$5,000 and no withholding paid would be the only taxpayer on Line 40 that is included in the composite return. Line 40 total is \$5,000.