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FISCAL IMPACT STATEMENT

LS 7449

BILL NUMBER: HB 1459

NOTE PREPARED: Feb 12, 2009

BILL AMENDED:

SUBJECT: Taxation of Investment Partnerships.

FIRST AUTHOR: Rep. Kersey

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: The bill provides that income received by a nonresident limited partner from an investment partnership is treated: (1) as business income subject to apportionment, if the nonresident limited partner elects to treat the income as business income or the nonresident limited partner meets certain nexus conditions through other activities; or (2) nonbusiness income allocable to the nonresident limited partner's home state, in cases where alternative (1) does not apply.

Effective Date: January 1, 2010.

Explanation of State Expenditures: *Department of State Revenue (DOR):* The DOR would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate the changes in this credit. The DOR's current level of resources should be sufficient to implement this change.

Explanation of State Revenues: *Summary* - The bill provides that a nonresident limited partner's investment income distributed from an investment partnership domiciled in Indiana would be allocated to his or her state of residence and would not be taxable in Indiana under the Individual Adjusted Gross Income (AGI) Tax unless:

- (1) The nonresident limited partner elects under the bill to treat all his or her income from the investment partnership as business income; or
- (2) the nonresident limited partner and the income from the investment partnership meets Indiana nexus conditions specified in the bill.

Under (1) and (2) the investment income would be treated as business income, with the amount derived from Indiana sources and taxable in Indiana determined by an apportionment formula. This provision would result in a loss of Individual AGI Tax revenue to the extent that (1) or (2) above do not apply to nonresident investment limited partners. The OFMA income tax databases do not detail the prevalence of investment partnerships in Indiana or the number of nonresident limited partners currently investing in Indiana investment partnerships. Consequently, the revenue loss resulting from the bill is indeterminable.

Since the provision takes effect beginning in tax year 2010, the revenue loss could potentially begin in FY 2010 with loss of withholdings on this income. Revenue from the Individual AGI Tax is distributed to the state General Fund.

Background Information - The bill defines an “investment partnership” as an entity that is treated as a partnership for federal income tax purposes, is not a dealer in qualifying investment securities defined under the bill, and meets the following criteria:

- (1) At least 90% of the partnership’s total assets is attributable to qualifying securities defined by the bill; deposits at banks and other financial institutions; interests in other entities; and office space and equipment reasonably necessary to conduct the partnership’s investment business.
- (2) At least 90% of the partnership's federal gross income consists of interest on and dividends from qualifying investment securities; gains from the sale or exchange of qualifying investment securities; and distributive shares of income from an interest in another entity.

The definition of “qualifying investment securities” includes stock; bonds; foreign and domestic currency deposits; mortgage or asset backed securities; repurchase agreements and loan participations; foreign currency exchange contracts; stock and bond index securities; options for the purchase or sale of securities, currencies, contracts, or financial instruments previously described; regulated futures contracts; commodities and futures, forwards, or options on commodities; and derivatives.

Under current statute, nonresident individuals deriving income from Indiana sources are subject to the Individual AGI Tax. Current statute also requires Indiana investment partnerships to withhold Individual AGI Tax on distributions or amounts credited to nonresident partners. The nonresident partner then must file an Indiana tax return to claim credit for the taxes withheld on the distributions. The credit would be to the extent that the nonresident partner’s state of residence imposes tax on the distributions. The withholding requirement does not apply when a nonresident partner is a resident of a reverse credit state with a tax rate higher than Indiana’s tax rate and the distributions are taxed by that state. In these instances, the nonresident partner would not owe tax to Indiana.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue.

Local Agencies Affected:

Information Sources:

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