

## Pass-Through Entity Withholding Tax Payment

**Purpose of form:** For taxable years beginning on or after January 1, 2008, every pass-through entity (PTE) doing business in the Commonwealth that has taxable income derived from Virginia sources and that must allocate any portion of that income to a nonresident owner is required to pay the withholding tax. The PTE withholds and remits tax using payment voucher, Form 502W. Form 502W is used to make a withholding payment prior to filing the return of income, Form 502. This will occur most often when the PTE utilizes the automatic extension to file. Form 502W can also be used to make a withholding payment prior to the due date. Do not enclose Form 502W with your return (Form 502). Instead, use Form 502V, payment voucher, to make payments with your return.

**Amount of withholding tax:** The PTE is required to withhold tax of 5% of the share of taxable income from Virginia sources that is allocable to each nonresident owner. The amount of withholding tax may be reduced by any tax credits earned by the PTE and allowable by the Code of Virginia that pass through to nonresident owners. The credit or credits may not reduce the tax liability of any nonresident owner to less than zero; nor may any unused credit be carried over on a unified return.

**Exempt Entities:** The PTE will not be required to pay the withholding tax if it:

- Is a Publicly Traded Partnership
- Is a Disregarded Entity
- Files a Unified Return on Behalf of All Nonresident Owners

**Undue Hardship:** If a PTE believes that the withholding requirement causes an undue hardship, the PTE may apply to the Tax Commissioner requesting an exemption. In addition to any other information that is pertinent to the PTE's petition for relief, the letter shall provide information to enable the Tax Commissioner to compare and evaluate the cost to the PTE of complying with the withholding tax requirements and the cost to the Commonwealth of collecting income tax from any nonresident owners who do not voluntarily file Virginia income tax returns and pay the tax.

**Exempt Owners:** The PTE must pay the withholding tax for all nonresident owners, with the following exceptions:

- Individuals who are exempt from paying federal income taxes based on their status or who are exempt from Virginia income taxes. The exemption must apply to the individual's share of the PTE's income. Examples are diplomatic immunity and individuals who did not have any liability for Virginia income tax in the previous year and who do not expect to have any liability in the current year.
- Entities other than individuals and corporations that are exempt from paying federal income taxes by reason of their

purpose or activities. The exemption from federal income tax must apply to the entity's share of the PTE's income. Examples of such exempt entities are:

- Other PTEs. Generally, a PTE does not need to withhold for a nonresident owner that is also a PTE. These nonresident owner PTEs are responsible for filing their own PTE returns of income and must pay the withholding tax for their nonresident owners' shares of income from Virginia sources. If a PTE is notified by a nonresident owner PTE that the nonresident owner PTE is not going to file a Virginia PTE return, then the PTE is required to withhold on the nonresident owner PTE.
- Caution: If a PTE withholds on a nonresident owner PTE, the nonresident owner PTE cannot claim credit on its Virginia 502 return for such withholding. PTE withholding is not "generation skipping" and does not pass through an intermediate PTE to owners that are more than one level of ownership away. In the event a PTE erroneously withholds for a nonresident owner PTE, the PTE should file an amended Form 502. See Page 4 of Form 502 instructions (Amended Returns) for additional information.
- Entities exempt by reason of diplomatic immunity or pursuant to treaties between the United States and other countries. An entity claiming this exemption must provide a statement to the PTE stating that it has diplomatic immunity from federal income tax.
  - Real estate investment trusts (REITs) except Captive REITs.

Corporations that are exempt from Virginia income tax include:

- Certain banks, insurance companies and public utilities that are subject to other taxes in lieu of Virginia income tax.
- Corporations exempt from federal income tax under IRC § 501.

If a nonresident owner claims to be exempt from the withholding tax, the PTE is required to obtain documentation from the nonresident owner setting forth the basis for such exemption. This documentation must be retained by the PTE with its records.

The determination of nonresident status will be based on the owner's address of record for the PTE unless the PTE has other information relating to the owner's residence or commercial domicile by reason of the owner's participation in management of the PTE. If an owner is also employed by the PTE the information relating to withholding on wages shall also be considered.

The PTE shall provide with its return of withholding tax a list of every individual, corporation and other entity claiming exemption

**Detach at dotted line below. DO NOT SEND ENTIRE PAGE.**

### Form 502W

(Doc ID 522)

For assistance, call (804)367-8037.

### Pass-Through Entity Withholding Tax Payment

VIRGINIA DEPARTMENT OF TAXATION  
PO BOX 1500, RICHMOND, VA 23218-1500

**File this voucher to make your advance payments of withholding tax. For payments that accompany Form 502, use Form 502V.**

Check if initial filer  
(This is the first year filing a PTE return.)

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Federal Employer ID Number	Entity Type	NAICS Code
Name of pass-through entity		
Address (Number and Street)		
Address continued		
City, State and ZIP Code		

To receive credit for your payment in the correct tax year, please enter the ending month (numerical) and year.

	Month Ending	Year Ending	
Calendar year:	12		OR;
Fiscal year:			OR;
Short taxable year:			

I declare that this return (including accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Amount of Payment

\$

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Signature \_\_\_\_\_ Date \_\_\_\_\_ Phone Number \_\_\_\_\_

from the withholding tax. The list shall contain the name, social security number, federal employer identification number or other taxpayer identification number and the address of each nonresident owner claiming exemption, as well as a description of the basis for the claimed exemption.

### Penalties

**Extension Penalty** - The PTE must pay at least 90% of the withholding tax due by the return due date to avoid a penalty. If the return is filed within the six month extension and less than 90% of the tax was paid by the original return due date, then the PTE owes an extension penalty. The penalty is 2% per month of the tax due with the return from the due date through the date the return is filed, up to a maximum of 12%.

**Late Filing Penalty** - If the return is filed after the extended due date, the extension is not valid, and the entity is subject to the late filing penalty of 30% or \$1,200, whichever is greater.

**Late Payment Penalty** - If the return is filed within the extended period and full payment is not included with the return, the entity is subject to the late payment penalty of 6% per month from the date the return is filed through the date of payment, up to a maximum of 30%.

**Interest** - Interest is due on any unpaid tax at the underpayment rate under IRC § 6621, plus 2%, from the due date until paid.

**When to File** - The withholding tax payment is due on the due date of the PTE's return regardless of whether the extension to file the income return (Form 502) is used. For calendar year filers, the withholding tax payment is due April 15, 2013.

### Where to file

Mail returns and payments to the **Virginia Department of Taxation, PO Box 1500, Richmond, VA 23218-1500.**

**Change of Ownership:** If there has been a change of ownership, send a notice of change to the **Virginia Department of Taxation, PO Box 1114, Richmond, Virginia 23218-1114.** You can register a new dealer and/or locations, by either completing a Form R-1, Business Registration Application, or electronically using iReg on the Department's website, **www.tax.virginia.gov.** The Form R-1 can be obtained from the Department's website or by calling the Department's Forms Request Unit at (804) 440-2541.

**Change of Address/Out-of-Business:** If you change your business mailing address or discontinue your business, either send a completed Form R-3, Registration Change Request or a letter to the **Virginia Department of Taxation, PO Box 1114, Richmond, Virginia 23218-1114.** A Form R-3 can be obtained from the Department's website, **www.tax.virginia.gov,** or by calling the Department's Forms Request Unit at (804) 440-2541.

**Questions:** If you have any questions about this return, please

call (804) 367-8037 or write the **Virginia Department of Taxation, PO Box 1115, Richmond, Virginia 23218-1115.**

**Preparation of Payment Voucher:** Complete the PTE's federal employer identification number (FEIN), entity type, NAICS Code, ending month and year and name and address information.

**Entity type:** (Note: A proper entry in this field is required.) Enter the code that corresponds to the type of entity filing this return.

<u>Type</u>	<u>Code</u>
S corporation	SC
General partnership	PG
Limited partnership	PL
Limited liability company	LL
Limited liability partnership	LP
Other	OB

**NAICS code:** Enter the 6-digit NAICS (North American Industry Classification System) code. You can download a list of these codes from the Business Registration Forms section on our website, **www.tax.virginia.gov.**

Determine the amount of withholding due by either:

- (1) Computing the taxable income of the PTE and applying the prorata share of the nonresident owners. Multiply the nonresident income by 5% to calculate the tax liability. Then reduce the tax liability by the owner's share of any tax credits.
- (2) Computing the taxable income of the individual nonresident owners. Calculate the tax liability of each owner by multiplying taxable income by 5%. Reduce the tax liability by the owner's share of tax credits.

Enter the total amount withheld for all nonresident owners in the block indicating amount of payment.

**Declaration and Signature:** Be sure to sign, date and enter your phone number in the space indicated.