

Multistate Tax Commission



Supplemental Hearing Officer's Report

Recommendation Concerning Enactment of a Uniformity Provision on Reporting Options For Non-resident Members of Pass-through Entities

October 8, 2003

I. Introduction.

This report supplements the two previous Hearing Officer Reports concerning the proposed uniformity provision on reporting options for non-resident members of pass-through entities. The initial Hearing Officer's Report was issued April 15, 2002 and the Hearing Officer's Report on the Second Public Hearing was issued on January 10, 2003.

II. Background.

In his Second Report, your Hearing Officer recommended submitting the proposal, attached as Exhibit A, to the states in a Bylaw 7 Survey. The Executive Committee approved that recommendation. The results of the Bylaw 7 Survey showed a majority of affected states would consider adopting the proposal. The proposal permits a composite return for pass-through entities and requires withholding of tax on income over \$1000 distributed to a nonresident member.

Representatives of Publicly Traded Partnerships (PTP) have been seeking an exemption from the withholding requirement. They explained before the Uniformity Committee and the Executive Committee at Salt Lake City in July 2003 their difficulties in complying with withholding.

There are about 60 PTPs, mostly in the energy field. About half of them do business in multiple states, a number in over half the states. They have wide ownership and substantial daily trading of their units. A single PTP may have over 200,000 unitholders. New unitholders get a stepped up basis, which results in substantial depreciation deductions. Most unitholders have their units held in street name in a brokerage account. In many of the PTPs, a large number of the units are held by the general partner.

The PTPs generally make four distributions a year. At the time of the distributions, they do not know the identity of many of their unitholders whose units are held in street name nor do they know whether the distribution will be income or a reduction in basis due to the generous depreciation deductions. At the end of the year, the brokerage houses report

the identity of the unitholders and the period they owned the units. The PTP then figures just how much income has been sheltered by federal depreciation provisions. Only then does the PTP know the identity of its unitholders, which of them have taxable income, and to what states that income is attributable. The PTP then distributes Schedule K-1s indicating each unitholders income (or loss) for each state.

A major purpose of the composite return and withholding in the proposal is to simplify the administration of state taxes. A single PTP with 200,000 unitholders doing business in 30 states could potentially result in 6 million state tax returns. Having the PTP file for nonresident unitholders could reduce that potentiality to a mere 30 returns. Your Hearing Officer has previously expressed the view that PTPs should not be permitted to use their unique status to create untenable administration burdens for unitholders and states.

In exploring the reality of this administrative burden, the PTPs have maintained that because of the extraordinarily generous federal depreciation deductions granted unitholders of PTPs, few unitholders actually have positive net income each year. Chris Buckalew of PricewaterhouseCoopers, who has long been the account for PTPs, prepared documentation from 12 of the largest PTPs with substantial multistate business based on 2002 data. His reports are attached as Exhibit B. These records show that the 12 PTPs have 490,909 unitholders, with most states having in excess of 200,000 unitholders whose PTPs do business in the state. But the number of those unitholders in each state that has income in excess of \$1000 (the threshold for withholding in the proposal) is generally only around 150, with considerably more in just a few states.

The PTPs are agreeable to filing annual reports with each state tax agencies listing just those unitholders with significant incomes in the state. The PTPs assert that most of these unitholders are, in all likelihood, already filing and paying tax in each state. This is probably true of the general partner who often has a substantial portion of the PTP income. I am trying to ascertain in a test state just what portion of the unitholders with incomes over \$1000 is filing, with what portion of the income. If compliance is already good, it may well not be worth asking these entities to perform an impossible task. (A certain number of states already require withholding, and PTPs are probably not complying. Other states have exempted PTPs) Finally, because of the generous depreciation deductions, the 12 PTPs collectively on the entity level had losses in all but ten states. Taxing at the entity level would thus not appear to be a solution here.

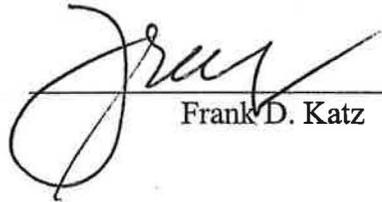
In sum, it appears that as a result of munificent federal legislation, these entities generate little taxable income to be reported to any state. Assuming that the unitholders with the bulk of reportable income are mostly reporting already, it does not appear sensible to include PTPs in the withholding requirement.

III. Hearing Officer Recommendations

Your Hearing Officer recommends that the Commission adopt a revised version of the proposal that excuses from the withholding requirement those PTPs that agree to file

proper information returns with a state. A copy of the revised proposal is attached as Exhibit C.

Respectfully submitted October 8, 2003,



Frank D. Katz

Exhibits Attached to Supplemental Report of the Hearing Officer
Regarding Proposed Uniform Provision Concerning Reporting
Options for Non-Resident Members of Pass-Through Entities

- Exhibit A: Uniformity Proposal approved for Bylaw 7 Survey
- Exhibit B: Documentation from Chris Buckalew of PricewaterhouseCooper.
- Exhibit C: Revised Uniformity Proposal Recommended for Adoption by the Commission

Exhibit A

Proposed Statutory Language on Reporting Options for Non-resident
Members of Pass-through Entities with Withholding Requirement
(Authorized for Bylaw 7 Survey by Executive Committee 1/17/03)

Section 1. Definitions.

- A. “Pass-through entity” means a corporation that for the applicable tax year is treated as an S Corporation under [IRC §1362(a), or State Tax Code §], and a general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation [for federal tax purposes] [under the state’s check-the-box regulation];
- B. “Member” means [*optional additional language: an individual who is*] a shareholder of an S corporation; a partner in a general partnership, a limited partnership, or a limited liability partnership; a member of a limited liability company; or a beneficiary of a trust;
- C. “Nonresident” means an individual who is not a resident of or domiciled in the state, a business entity that does not have its commercial domicile in the state, and a trust not organized in the state.

Section 2. Composite Return Authorized.

- A. A pass-through entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax at the highest marginal rate provided in [state tax rate provision] on the members’ pro rata or distributive shares of income of the pass-through entity from doing business in, or deriving income from sources within, this State.
- B. A nonresident member whose only source of income within a state is from one or more pass-through entities may elect to be included in a composite return filed pursuant to this section.
- C. A nonresident member that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the member’s behalf by the pass-through entity.

Section 3. Withholding Required.

- A. A pass-through entity shall withhold income tax at the highest tax rate provided in [section x for individuals or section y for corporations or section z for other entities] on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the [tax agency]. The pass-through entity shall be liable to the [state] for the payment of the tax required to be withheld under this

section and shall not be liable to such member for the amount withheld and paid over in compliance with this section. A member of a pass-through entity that is itself a pass-through entity (a "lower-tier pass-through entity") shall be subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier pass-through entity to each of its nonresident members. The [tax agency] shall apply tax withheld and paid over by a pass-through entity on distributions to a lower-tier pass-through entity to the withholding required of that lower-tier pass-through entity.

B. A pass-through entity shall, at the time of payment made pursuant to this section, deliver to the department a return upon a form prescribed by the department showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the department may require. A pass-through entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such member on a form prescribed by the department.

C. Notwithstanding subsection A, a pass-through entity is not required to withhold tax for a nonresident member if

- (1) the member has a pro rata or distributive share of income of the pass-through entity from doing business in, or deriving income from sources within, this State of less than \$1,000 per annual accounting period;
- (2) the [tax agency] has determined by regulation, ruling or instruction that the member's income is not subject to withholding; or
- (3) the member elects to have the tax due paid as part of the pass-through entity's composite return under Section 2.

SUMMARY OF SELECTED MLP'S

(Based on 12 Clients and 490,909 investor K-1 mailings)

STATE	INCOME/LOSS	MLP'S IN STATE	STATE RECORDS	STATE RECORDS WITH INCOME	TOTAL INCOME	STATE RECORDS WITH INCOME > \$1,000	STATE RECORDS WITH INCOME > \$500
			3,863	30	\$30	0	0
AK	-\$3	2	3,863	27,756	\$549,749	8	10
AL	-\$895,548	12	162,698	52,130	\$2,621,634	109	299
AR	\$1,972,208	9	138,788	5,852	\$434,868	7	15
AZ	-\$11,787,197	7	208,933	33,654	\$2,020,423	66	175
CA	-\$30,814,530	10	191,042	632	\$5,736	1	1
CN	\$5,584	1	4,761	30,334	\$1,511,813	52	118
CO	-\$17,126,812	11	284,551	46,611	\$2,193,914	64	210
CT	\$493,255	5	91,684	1,269	\$6,536	1	1
DE	-\$17,782	4	75,385	51,506	\$1,366,336	33	85
FL	-\$5,410,617	11	272,002	33,272	\$293,737	6	8
GA	-\$53,628	10	233,634	30,438	\$7,355,469	213	534
IA	-\$14,492,435	9	253,157	93,485	\$8,457,767	645	1,650
IL	-\$4,907,887	12	435,879	73,090	\$10,279,580	1,001	2,883
IN	\$2,598,140	12	311,841	51,894	\$5,424,260	101	261
KS	-\$2,605,780	10	253,252	33,258	\$465,743	16	55
KY	-\$1,357,289	8	215,328	77,090	\$9,607,784	75	195
LA	-\$14,260,373	12	319,516	24,994	\$493,564	24	64
MA	-\$662,811	4	67,941	5,912	\$15,647	1	1
MD	-\$535,580	6	122,896	9,930	\$436,370	22	62
ME	-\$713,376	1	42,466	48,664	\$2,352,929	143	449
MI	-\$2,340,300	9	239,129	58,398	\$4,598,553	108	288
MN	-\$7,110,972	11	314,275	52,990	\$2,304,463	37	83
MO	\$1,419,440	9	266,419	33,250	\$440,585	8	14
MS	-\$754,719	10	230,334	32,747	\$2,282,864	83	199
MT	-\$8,777,905	8	205,680	30,784	\$368,439	4	7
NC	-\$475,260	7	200,810	59,742	\$4,722,798	170	378
ND	-\$25,357,504	8	344,078	27,803	\$1,559,543	26	48
NE	-\$5,152,406	8	235,440	8,600	\$81,041	1	6
NH	-\$135,932	2	41,160	34,499	\$3,534,409	243	694
NJ	-\$4,003,738	7	205,150	29,081	\$2,958,843	127	376
NM	-\$5,996,826	10	210,746	18,865	\$149,517	4	9
NV	-\$6,071,437	3	152,225	59,718	\$5,215,848	531	1,592
NY	\$2,578,455	8	189,631	4,657	\$5,166	0	0
OF/FO	-\$28,539	2	55,761	56,400	\$5,448,242	566	1,649
OH	\$3,198,081	9	256,045	60,885	\$16,212,562	274	735
OK	\$13,844,738	12	278,501				

EXHIBIT B

EXHIBIT B

Number of Accounts With Income Greater Than \$500

STATE	STATE RECORDS WITH INCOME > \$500	TOTAL INCOME > \$500	TOTAL INCOME > \$500 AND < \$1000								Foreign	Exempt	IRA/SEP/	Pension	Clearing
				Individual	Corporation	Partnership	Estate	Trust	Citizen	Other	Org	KEOGH	Plan	Entity/RESP	
AL	10	\$419,484	\$1,258	2	6	1	0	0	0	1	0	0	0	0	
AR	299	\$1,427,923	\$97,836	150	33	9	5	66	3	14	6	2	3	8	
AZ	15	\$375,808	\$5,284	6	3	2	0	3	0	1	0	0	0	0	
CA	175	\$1,295,936	\$72,702	85	18	15	3	36	5	13	1	0	0	0	
CN	1	\$4,971	\$0	0	0	1	0	0	0	0	5	0	0	6	
CO	118	\$855,263	\$43,181	43	19	5	1	27	1	11	6	6	2	2	
CT	210	\$1,102,841	\$85,875	92	42	15	3	28	5	11	6	6	0	0	
DE	1	\$4,763	\$0	0	0	1	0	0	0	0	0	0	1	2	
FL	85	\$620,064	\$33,543	34	23	6	0	9	2	3	3	2	1	1	
GA	8	\$203,345	\$1,006	0	6	1	0	0	0	0	0	0	0	0	
IA	534	\$6,404,278	\$182,591	287	78	38	2	72	10	37	6	4	0	0	
IL	1,850	\$5,134,000	\$467,326	872	119	34	31	441	16	44	18	46	15	14	
IN	2,883	\$4,937,877	\$876,217	1,542	208	54	43	765	25	62	45	89	32	18	
KS	281	\$4,521,360	\$88,857	118	52	20	2	31	4	26	5	2	0	1	
KY	55	\$100,336	\$24,109	18	20	3	0	3	2	2	2	2	0	3	
LA	195	\$8,406,860	\$79,001	84	34	9	2	35	2	14	5	1	1	8	
MA	64	\$89,673	\$27,067	25	19	4	0	3	2	3	3	3	0	2	
MD	1	\$5,607	\$0	0	1	0	0	0	0	0	0	0	0	0	
ME	62	\$86,646	\$27,622	24	19	4	0	3	2	2	3	3	0	2	
MI	449	\$947,965	\$171,172	209	60	20	6	108	5	8	14	12	4	3	
MN	288	\$3,551,763	\$111,140	147	62	16	1	26	6	21	6	1	1	1	
MO	83	\$1,709,920	\$31,819	29	21	5	1	9	2	11	0	0	0	5	
MS	14	\$296,552	\$3,857	1	6	0	0	2	0	2	0	0	0	3	
MT	199	\$1,884,536	\$77,529	114	27	12	0	23	6	12	1	0	0	4	
NC	7	\$279,999	\$2,343	0	6	1	0	0	0	0	0	0	0	0	
ND	378	\$4,065,955	\$119,449	213	47	25	0	55	8	19	3	3	1	4	
NE	48	\$1,245,725	\$15,008	17	16	5	0	4	0	6	0	0	0	0	
NH	6	\$7,073	\$4,143	2	3	0	0	0	0	0	0	0	0	1	
NJ	694	\$1,688,395	\$230,779	356	54	17	7	206	2	12	15	13	10	2	
NM	376	\$1,679,888	\$137,830	186	32	9	6	94	8	15	7	6	5	8	
NV	9	\$69,047	\$3,044	3	1	1	0	3	0	1	0	0	0	0	
NY	1,592	\$2,286,103	\$398,385	863	87	33	14	488	8	25	24	30	13	7	
OH	1,649	\$2,444,131	\$380,045	908	80	28	15	513	6	28	24	25	14	8	
OK	735	\$13,879,911	\$238,578	356	95	34	9	143	18	45	12	10	5	8	
OR	8	\$34,462	\$1,118	1	4	1	0	0	0	0	0	0	0	0	
PA	8,917	\$13,568,544	\$613,816	5,128	343	98	87	2,375	16	83	68	625	86	8	
RI	67	\$160,971	\$29,943	20	19	4	0	7	3	3	3	2	0	6	
SC	5	\$99,869	\$505	1	3	1	0	0	0	0	0	0	0	0	
SD	6	\$235,518	\$2,031	0	5	1	0	0	0	0	0	0	0	0	
TN	14	\$301,355	\$5,611	0	8	1	0	2	0	1	0	0	0	2	

Number of Accounts With Income Greater Than \$1,000

STATE	STATE RECORDS WITH INCOME > \$1,000	Total INCOME > \$1,000	Individual	Corporation	Partnership	Estate	Trust	Foreign Citizen	Other	Exempt Org	IRA/SEP/ KEOGH	Pension Plan	Clearing Entity/RESP
AL	8	\$418,226	1	5	1	0	0	0	1	0	0	0	0
AR	109	\$1,330,087	42	20	3	1	24	1	7	5	0	0	6
AZ	7	\$370,324	2	3	2	0	0	0	0	0	0	0	0
CA	66	\$1,223,234	29	11	5	0	10	2	8	0	0	0	0
CN	1	\$4,971	0	0	1	0	0	1	4	1	0	0	5
CO	52	\$812,082	18	7	3	1	12	1	4	3	2	1	1
CT	64	\$1,016,968	22	22	5	0	2	2	4	0	0	0	0
DE	1	\$4,763	0	0	1	0	0	0	0	0	0	0	1
FL	33	\$586,521	10	11	5	0	0	1	2	1	1	1	1
GA	6	\$202,339	0	4	1	0	0	0	0	0	0	0	0
IA	213	\$6,221,687	118	38	14	1	16	6	19	1	0	8	12
IL	645	\$4,868,674	318	59	16	17	159	12	21	10	13	9	12
IN	1,001	\$4,061,660	493	96	33	15	248	16	28	26	25	0	1
KS	101	\$4,432,703	40	27	8	1	8	1	12	2	1	0	2
KY	16	\$75,227	4	5	1	0	2	0	0	1	1	0	6
LA	75	\$8,327,859	22	17	6	1	12	1	8	2	0	0	1
MA	24	\$62,606	8	6	2	0	0	1	2	3	1	0	0
MD	1	\$5,607	0	1	0	0	0	0	0	0	1	0	1
ME	22	\$59,024	7	6	2	0	0	1	1	3	3	3	1
MI	143	\$776,793	64	28	6	0	27	2	5	4	0	1	1
MN	108	\$3,440,623	55	25	8	0	5	3	9	1	0	0	4
MO	37	\$1,678,101	9	10	3	0	5	0	6	0	0	0	1
MS	8	\$292,695	0	4	0	0	2	0	1	0	0	0	2
MT	83	\$1,787,007	44	10	8	0	8	5	5	1	0	0	0
NC	4	\$277,656	0	3	1	0	0	0	0	0	0	0	1
ND	170	\$3,946,506	101	25	11	0	17	5	9	1	0	0	0
NE	26	\$1,230,717	6	12	5	0	0	0	3	0	0	0	1
NH	1	\$2,930	0	0	0	0	0	0	0	5	3	2	1
NJ	243	\$1,435,616	120	20	11	3	73	1	4	5	0	0	7
NM	127	\$1,541,858	51	20	6	2	27	1	8	0	0	0	0
NV	4	\$66,003	1	1	1	0	0	0	1	0	0	0	0
NY	531	\$1,887,718	258	44	16	4	168	2	9	12	8	5	5
OH	566	\$2,064,086	279	41	15	5	183	3	12	11	6	5	6
OK	274	\$13,641,333	117	53	19	4	41	4	20	7	2	0	7
OR	4	\$33,344	1	3	0	0	0	0	0	0	0	0	0
PA	3,949	\$12,954,728	2,190	191	68	37	1,135	8	53	37	177	46	7
RI	21	\$131,028	4	6	1	0	2	0	1	1	1	0	5
SC	4	\$99,384	0	3	1	0	0	0	0	0	0	0	0
SD	3	\$233,487	0	2	1	0	0	0	0	0	0	0	1
TN	6	\$295,744	0	2	1	0	2	0	0	0	0	0	0
TX	619	\$14,285,448	294	70	31	11	158	3	22	9	11	10	0
UT	3	\$394,655	0	2	0	0	0	0	1	0	0	0	0

Detail of Income For Accounts With Income Greater Than \$500

STATE	STATE RECORDS WITH INCOME > \$500	TOTAL INCOME > \$500									IRA/SEP/ KEOGH	Pension Plan	Clearing Entity/RESP
			Individual	Corporation	Partnership	Estate	Trust	Foreign Citizen	Other	Exempt Org			
AL	10	\$419,484	\$2,080	\$337,239	\$13,015	\$0	\$0	\$0	\$67,150	\$0	\$0	\$0	\$0
AR	299	\$1,427,923	\$131,200	\$515,669	\$103,781	\$4,436	\$114,394	\$4,771	\$22,860	\$7,062	\$1,924	\$1,121	\$520,685
AZ	15	\$375,608	\$98,208	\$110,278	\$164,482	\$0	\$2,125	\$0	\$515	\$0	\$0	\$0	\$0
CA	175	\$1,295,936	\$131,702	\$929,538	\$19,583	\$1,981	\$38,231	\$4,932	\$169,906	\$744	\$0	\$1,319	\$0
CN	1	\$4,971	\$0	\$0	\$4,971	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CO	118	\$855,263	\$55,087	\$334,410	\$18,797	\$1,008	\$49,450	\$1,523	\$155,748	\$2,919	\$0	\$0	\$238,321
CT	210	\$1,102,841	\$93,321	\$751,248	\$166,866	\$1,957	\$16,289	\$4,198	\$30,680	\$5,728	\$6,333	\$2,795	\$23,428
DE	1	\$4,763	\$0	\$0	\$4,763	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FL	85	\$620,064	\$42,938	\$522,167	\$8,809	\$0	\$5,573	\$1,882	\$17,452	\$2,542	\$2,335	\$1,509	\$14,857
GA	8	\$203,345	\$0	\$171,844	\$30,353	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,148
IA	534	\$6,404,278	\$810,634	\$4,171,905	\$1,257,247	\$1,937	\$85,381	\$19,915	\$68,805	\$5,928	\$2,548	\$0	\$0
IL	1,650	\$5,134,000	\$932,392	\$1,288,640	\$326,685	\$35,292	\$604,990	\$24,927	\$171,490	\$33,350	\$39,608	\$14,907	\$1,681,719
IN	2,883	\$4,937,877	\$1,439,889	\$448,419	\$124,665	\$45,908	\$838,697	\$37,314	\$233,116	\$70,354	\$87,740	\$38,882	\$1,572,893
KS	261	\$4,521,360	\$114,204	\$3,548,939	\$770,021	\$2,710	\$24,098	\$3,739	\$40,669	\$4,452	\$1,732	\$0	\$10,796
KY	55	\$100,336	\$18,673	\$29,787	\$3,083	\$0	\$3,102	\$1,804	\$1,608	\$2,167	\$1,990	\$0	\$38,322
LA	195	\$8,406,860	\$81,273	\$4,332,546	\$216,576	\$2,175	\$70,862	\$2,813	\$3,338,490	\$4,355	\$566	\$808	\$356,396
MA	64	\$89,673	\$28,337	\$28,383	\$4,484	\$0	\$1,874	\$2,064	\$4,361	\$2,786	\$3,102	\$0	\$16,282
MD	1	\$5,607	\$0	\$5,607	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ME	62	\$86,646	\$27,203	\$26,939	\$4,463	\$0	\$1,863	\$2,054	\$2,058	\$2,773	\$3,087	\$0	\$16,206
MI	449	\$947,965	\$229,422	\$91,647	\$400,694	\$4,746	\$86,888	\$4,786	\$69,689	\$11,972	\$11,387	\$9,499	\$27,235
MN	288	\$3,551,763	\$319,272	\$2,545,224	\$610,779	\$950	\$22,254	\$8,362	\$36,010	\$4,247	\$569	\$1,906	\$2,190
MO	83	\$1,709,920	\$25,817	\$1,229,228	\$258,033	\$639	\$16,830	\$1,237	\$66,915	\$0	\$0	\$0	\$113,223
MS	14	\$296,552	\$588	\$152,702	\$0	\$0	\$3,457	\$0	\$104,270	\$0	\$0	\$0	\$35,535
MT	199	\$1,884,536	\$394,929	\$962,246	\$389,767	\$0	\$27,057	\$9,669	\$21,944	\$1,375	\$0	\$0	\$57,549
NC	7	\$279,999	\$0	\$231,301	\$48,698	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ND	378	\$4,065,955	\$896,406	\$1,978,573	\$1,024,994	\$0	\$57,355	\$18,374	\$42,070	\$3,683	\$1,761	\$562	\$40,177
NE	48	\$1,245,725	\$24,434	\$998,223	\$212,727	\$0	\$2,404	\$0	\$7,937	\$0	\$0	\$0	\$0
NH	6	\$7,073	\$1,595	\$2,548	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,930
NJ	694	\$1,666,395	\$381,704	\$140,277	\$813,574	\$6,300	\$177,209	\$1,929	\$108,556	\$13,553	\$11,336	\$16,733	\$15,224
NM	376	\$1,679,688	\$180,613	\$351,567	\$93,097	\$5,889	\$155,212	\$6,263	\$243,747	\$9,060	\$3,978	\$2,521	\$627,741
NV	9	\$69,047	\$4,377	\$60,230	\$1,410	\$0	\$1,755	\$0	\$1,275	\$0	\$0	\$0	\$0
NY	1,592	\$2,286,103	\$720,443	\$148,635	\$599,297	\$14,590	\$387,364	\$6,320	\$183,747	\$27,108	\$28,242	\$28,981	\$141,378
OH	1,649	\$2,444,131	\$719,518	\$149,107	\$488,602	\$15,527	\$425,449	\$9,409	\$197,495	\$33,351	\$22,971	\$29,982	\$352,720
OK	735	\$13,879,911	\$347,428	\$4,533,493	\$7,990,985	\$10,118	\$194,412	\$14,075	\$108,210	\$15,157	\$6,882	\$2,637	\$656,514
OR	6	\$34,462	\$1,223	\$32,683	\$556	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
PA	8,917	\$13,568,544	\$2,935,920	\$825,915	\$5,628,252	\$119,830	\$1,308,805	\$29,446	\$1,816,899	\$169,590	\$281,517	\$132,187	\$324,383
RI	67	\$160,971	\$20,243	\$22,824	\$3,375	\$0	\$11,384	\$2,022	\$2,730	\$2,011	\$1,844	\$0	\$94,558
SC	5	\$99,889	\$505	\$83,199	\$16,185	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
SD	6	\$235,518	\$0	\$193,303	\$42,215	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TN	14	\$301,355	\$0	\$217,921	\$47,113	\$0	\$3,219	\$0	\$501	\$0	\$0	\$0	\$32,601

Detail of Income for Accounts With Income Greater Than \$1,000

STATE	STATE RECORDS WITH INCOME > \$1000	TOTAL INCOME > \$1000	STATE RECORDS WITH TOTAL INCOME > \$1000					Estate	Trust	Foreign Citizen	Other	IRA/SEP/KE			Clearing Entity/RESP
			Individual	Corporation	Partnership	Exempt Org	OGH					Pension Plan			
AL	8	\$418,226	\$1,371	\$336,690	\$13,015	\$0	\$0	\$0	\$67,150	\$0	\$0	\$0	\$0	\$518,950	
AR	109	\$1,330,087	\$81,346	\$505,834	\$99,486	\$2,194	\$94,460	\$3,315	\$18,143	\$6,359	\$0	\$0	\$0	\$0	
AZ	7	\$370,324	\$95,684	\$110,278	\$164,482	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,319	\$0	
CA	66	\$1,223,234	\$94,690	\$926,241	\$13,012	\$0	\$18,607	\$2,780	\$186,585	\$0	\$0	\$0	\$0	\$0	
CN	1	\$4,971	\$0	\$0	\$4,971	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
CO	52	\$812,082	\$39,777	\$333,997	\$7,174	\$1,008	\$39,458	\$1,523	\$150,586	\$1,027	\$0	\$0	\$0	\$237,532	
CT	64	\$1,016,966	\$53,139	\$739,278	\$160,278	\$0	\$2,125	\$2,970	\$26,734	\$4,010	\$3,680	\$2,172	\$22,582	\$0	
DE	1	\$4,763	\$0	\$0	\$4,763	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
FL	33	\$586,521	\$27,078	\$514,662	\$8,050	\$0	\$0	\$0	\$1,138	\$16,641	\$1,603	\$1,519	\$1,509	\$14,321	
GA	6	\$202,339	\$0	\$170,838	\$30,353	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
IA	213	\$9,221,887	\$1,015,108	\$4,405,440	\$688,391	\$1,352	\$33,417	\$16,866	\$58,731	\$2,382	\$0	\$0	\$0	\$0	
IL	645	\$4,666,674	\$767,629	\$1,230,749	\$239,719	\$24,927	\$467,856	\$21,577	\$156,948	\$29,095	\$18,298	\$9,871	\$1,680,005	\$0	
IN	1,001	\$4,061,660	\$1,015,792	\$384,967	\$108,823	\$28,401	\$587,025	\$31,481	\$210,644	\$56,802	\$46,461	\$23,318	\$1,567,946	\$0	
KS	101	\$4,432,703	\$74,119	\$3,535,280	\$761,057	\$1,893	\$10,968	\$1,514	\$33,559	\$2,383	\$1,134	\$0	\$0	\$10,796	
KY	16	\$75,227	\$9,905	\$20,703	\$1,582	\$0	\$2,579	\$0	\$0	\$1,367	\$1,294	\$0	\$0	\$355,209	
LA	75	\$8,327,859	\$42,728	\$4,319,751	\$214,805	\$1,502	\$55,182	\$2,270	\$3,333,848	\$2,664	\$0	\$0	\$0	\$15,694	
MA	24	\$62,806	\$17,119	\$17,492	\$3,132	\$0	\$0	\$1,248	\$3,472	\$2,786	\$1,663	\$0	\$0	\$0	
MD	1	\$5,607	\$0	\$5,607	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
ME	22	\$69,024	\$16,033	\$17,409	\$3,117	\$0	\$0	\$1,243	\$1,173	\$2,773	\$1,655	\$0	\$0	\$15,621	
MI	143	\$776,793	\$152,928	\$73,511	\$382,438	\$0	\$40,603	\$3,386	\$88,210	\$5,754	\$5,274	\$8,904	\$25,758	\$0	
MN	108	\$3,440,623	\$360,334	\$2,607,142	\$426,162	\$0	\$8,668	\$5,799	\$27,274	\$1,148	\$1,906	\$0	\$0	\$2,190	
MO	37	\$1,678,101	\$11,201	\$1,221,552	\$254,828	\$0	\$13,964	\$0	\$64,094	\$0	\$0	\$0	\$0	\$112,462	
MS	8	\$292,895	\$0	\$151,195	\$0	\$0	\$3,457	\$0	\$103,731	\$0	\$0	\$0	\$0	\$34,312	
MT	83	\$1,787,007	\$348,604	\$950,901	\$387,425	\$0	\$16,665	\$9,115	\$16,928	\$1,375	\$0	\$0	\$0	\$55,994	
NC	4	\$277,656	\$0	\$228,958	\$48,698	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
ND	170	\$3,946,506	\$481,014	\$2,733,771	\$603,977	\$0	\$35,949	\$15,989	\$35,089	\$2,412	\$0	\$0	\$0	\$38,305	
NE	26	\$1,230,717	\$16,432	\$1,007,423	\$201,058	\$0	\$0	\$0	\$5,804	\$0	\$0	\$0	\$0	\$0	
NH	1	\$2,930	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,930	
NJ	243	\$1,435,616	\$254,200	\$117,953	\$808,720	\$3,990	\$106,909	\$1,166	\$104,012	\$6,979	\$4,729	\$12,284	\$14,674	\$626,852	
NM	127	\$1,541,858	\$110,588	\$342,928	\$90,364	\$3,630	\$117,123	\$3,998	\$238,508	\$7,669	\$0	\$0	\$0	\$0	
NV	4	\$66,003	\$3,088	\$60,230	\$1,410	\$0	\$0	\$0	\$1,276	\$0	\$0	\$0	\$0	\$0	
NY	531	\$1,887,718	\$524,245	\$122,165	\$589,793	\$7,512	\$271,924	\$3,014	\$173,939	\$18,955	\$13,861	\$22,580	\$139,730	\$351,266	
OH	566	\$2,064,086	\$533,213	\$124,868	\$481,083	\$8,815	\$313,958	\$7,490	\$185,487	\$24,837	\$10,301	\$22,968	\$655,583	\$0	
OK	274	\$13,641,333	\$231,571	\$4,511,839	\$7,978,106	\$7,464	\$141,828	\$8,354	\$91,991	\$12,108	\$2,491	\$0	\$0	\$0	
OR	4	\$33,344	\$1,223	\$32,121	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
PA	3,949	\$12,954,728	\$2,672,670	\$778,849	\$5,613,159	\$101,104	\$1,172,711	\$24,839	\$1,801,414	\$157,564	\$188,899	\$119,738	\$323,781	\$93,999	
RI	21	\$131,028	\$9,184	\$14,731	\$1,466	\$0	\$7,942	\$0	\$1,238	\$1,269	\$1,199	\$0	\$0	\$0	
SC	4	\$99,384	\$0	\$83,199	\$16,185	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
SD	3	\$233,487	\$0	\$191,272	\$42,215	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$31,945	
TN	6	\$295,744	\$0	\$213,467	\$47,113	\$0	\$3,219	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
TX	619	\$14,285,448	\$672,875	\$6,148,722	\$6,936,565	\$18,357	\$290,857	\$4,448	\$156,374	\$17,047	\$13,444	\$28,959	\$0	\$0	
UT	3	\$294,655	\$0	\$157,399	\$0	\$0	\$0	\$0	\$137,256	\$0	\$0	\$0	\$0	\$0	
VA	5	\$139,831	\$1,171	\$117,720	\$20,940	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
WA	1	\$6,197	\$0	\$6,197	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
WI	60	\$374,158	\$47,918	\$238,183	\$46,511	\$0	\$2,302	\$2,735	\$4,678	\$4,891	\$3,391	\$2,731	\$20,818	\$0	
WY	3	\$79,689	\$3,801	\$74,151	\$1,737	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
TOTAL	9,448	\$96,879,896	\$9,807,658	\$39,883,859	\$27,806,163	\$212,349	\$3,859,554	\$178,268	\$7,481,516	\$374,959	\$321,199	\$266,363	\$7,008,200		

Detail of Income For Accounts With Income Between \$500 and \$1,000

STATE	STATE RECORDS WITH TOTAL INCOME >		Individual	Corporation	Partnership	Estate	Trust	Foreign Citizen	Other	Exempt Org	IRA/SEP/ KEOGH	Pension Plan	Clearing Entity/RESP
	INCOME > \$500	<\$1000 \$500 AND < \$1000											
AL	2	\$1,258	\$709	\$549	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AR	190	\$97,836	\$49,854	\$9,835	\$4,285	\$2,242	\$19,934	\$1,456	\$4,717	\$723	\$1,924	\$1,121	\$1,735
AZ	8	\$5,284	\$2,644	\$0	\$0	\$0	\$2,125	\$0	\$515	\$0	\$0	\$0	\$0
CA	109	\$72,702	\$37,012	\$3,297	\$6,571	\$1,981	\$17,624	\$2,152	\$3,321	\$744	\$0	\$0	\$0
CO	66	\$43,181	\$15,310	\$8,360	\$1,676	\$0	\$9,992	\$0	\$5,162	\$1,892	\$0	\$0	\$789
CT	146	\$85,875	\$40,182	\$11,972	\$6,588	\$1,957	\$14,164	\$1,228	\$3,946	\$1,716	\$2,653	\$623	\$846
FL	52	\$33,543	\$15,860	\$7,505	\$759	\$0	\$5,573	\$744	\$811	\$939	\$816	\$0	\$536
GA	2	\$1,006	\$0	\$1,006	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
IA	321	\$182,591	\$91,017	\$23,842	\$15,988	\$585	\$31,944	\$3,049	\$10,074	\$3,544	\$2,548	\$0	\$0
IL	1,003	\$467,326	\$218,644	\$37,691	\$13,085	\$10,365	\$137,134	\$3,350	\$14,542	\$4,255	\$21,310	\$5,036	\$1,714
IN	1,882	\$876,217	\$424,097	\$63,452	\$15,842	\$17,507	\$251,672	\$5,833	\$22,472	\$13,552	\$41,279	\$15,564	\$4,947
KS	160	\$88,657	\$40,085	\$13,659	\$8,964	\$817	\$13,130	\$2,225	\$7,110	\$2,069	\$598	\$0	\$0
KY	38	\$24,109	\$8,768	\$8,084	\$1,501	\$0	\$523	\$1,604	\$1,608	\$800	\$696	\$0	\$525
LA	120	\$79,001	\$38,545	\$12,795	\$1,771	\$673	\$15,680	\$543	\$4,842	\$1,791	\$566	\$808	\$1,187
MA	40	\$27,067	\$11,218	\$8,891	\$1,352	\$0	\$1,874	\$816	\$889	\$0	\$1,439	\$0	\$588
ME	40	\$27,622	\$11,170	\$9,530	\$1,346	\$0	\$1,863	\$811	\$885	\$0	\$1,432	\$0	\$585
MI	304	\$171,172	\$76,494	\$18,136	\$8,229	\$4,746	\$46,285	\$1,400	\$1,479	\$6,218	\$6,113	\$595	\$1,477
MN	180	\$111,140	\$54,531	\$21,343	\$5,763	\$950	\$13,586	\$2,563	\$8,736	\$3,099	\$569	\$0	\$0
MO	46	\$31,819	\$14,616	\$7,674	\$1,205	\$639	\$2,866	\$1,237	\$2,821	\$0	\$0	\$0	\$761
MS	6	\$3,857	\$588	\$1,507	\$0	\$0	\$0	\$0	\$539	\$0	\$0	\$0	\$1,223
MT	116	\$77,529	\$46,325	\$11,345	\$2,342	\$0	\$10,392	\$554	\$5,016	\$0	\$0	\$0	\$1,555
NC	3	\$2,343	\$0	\$2,343	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ND	208	\$119,449	\$58,533	\$15,663	\$9,015	\$0	\$21,406	\$2,385	\$6,981	\$1,271	\$1,761	\$562	\$1,872
NE	22	\$15,008	\$8,002	\$2,469	\$0	\$0	\$2,404	\$0	\$2,133	\$0	\$0	\$0	\$0
NH	4	\$4,143	\$1,595	\$2,548	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
NJ	451	\$230,779	\$107,504	\$22,324	\$4,854	\$2,310	\$70,300	\$763	\$4,544	\$6,574	\$6,607	\$4,449	\$550
NM	248	\$137,830	\$69,025	\$8,641	\$2,733	\$2,059	\$39,089	\$2,265	\$5,239	\$1,391	\$3,978	\$2,521	\$689
NV	5	\$3,044	\$1,289	\$0	\$0	\$0	\$1,755	\$0	\$0	\$0	\$0	\$0	\$0
NY	1,061	\$398,385	\$196,198	\$26,470	\$9,504	\$7,078	\$115,440	\$3,306	\$9,808	\$8,151	\$14,381	\$6,401	\$1,648
OH	1,083	\$380,045	\$186,305	\$24,239	\$7,519	\$6,712	\$111,491	\$1,919	\$12,008	\$8,714	\$12,670	\$7,014	\$1,454
OK	461	\$238,578	\$117,626	\$21,654	\$11,110	\$2,654	\$52,586	\$5,721	\$16,219	\$3,049	\$4,391	\$2,637	\$931
OR	2	\$1,118	\$0	\$562	\$556	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
PA	4,964	\$613,816	\$261,250	\$47,066	\$13,093	\$13,868	\$140,752	\$4,607	\$15,485	\$12,026	\$92,618	\$12,449	\$602
RI	46	\$29,943	\$11,059	\$8,093	\$1,909	\$0	\$3,422	\$2,022	\$1,492	\$742	\$645	\$0	\$559
SC	1	\$505	\$505	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
SD	3	\$2,031	\$0	\$2,031	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TN	8	\$5,611	\$0	\$4,454	\$0	\$0	\$0	\$0	\$501	\$0	\$0	\$0	\$656
TX	1,141	\$580,519	\$285,231	\$33,095	\$18,847	\$11,364	\$170,142	\$5,168	\$21,305	\$8,160	\$16,598	\$10,809	\$0
VA	1	\$534	\$0	\$0	\$534	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
WI	117	\$68,514	\$25,553	\$19,842	\$3,404	\$1,804	\$9,712	\$1,131	\$1,197	\$2,648	\$2,444	\$0	\$779

EXHIBIT C

Proposed Statutory Language on Reporting Options for Non-resident
Members of Pass-through Entities with Withholding Requirement
(Revised Proposal Recommended by Hearing Officer October 8, 2003)

Section 1. Definitions.

- A. "Pass-through entity" means a corporation that for the applicable tax year is treated as an S Corporation under [IRC §1362(a), or State Tax Code §], and a general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation [for federal tax purposes] [under the state's check-the-box regulation];
- B. "Member" means [*optional additional language*: an individual who is] a shareholder of an S corporation; a partner in a general partnership, a limited partnership, or a limited liability partnership; a member of a limited liability company; or a beneficiary of a trust;
- C. "Nonresident" means an individual who is not a resident of or domiciled in the state, a business entity that does not have its commercial domicile in the state, and a trust not organized in the state.

Section 2. Composite Return Authorized.

- A. A pass-through entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax at the highest marginal rate provided in [state tax rate provision] on the members' pro rata or distributive shares of income of the pass-through entity from doing business in, or deriving income from sources within, this State.
- B. A nonresident member whose only source of income within a state is from one or more pass-through entities may elect to be included in a composite return filed pursuant to this section.
- C. A nonresident member that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the pass-through entity.

Section 3. Withholding Required.

- A. A pass-through entity shall withhold income tax at the highest tax rate provided in [section x for individuals or section y for corporations or section z for other entities] on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the [tax agency]. The pass-through entity shall be liable to the [state] for the payment of the tax required to be withheld under this

section and shall not be liable to such member for the amount withheld and paid over in compliance with this section. A member of a pass-through entity that is itself a pass-through entity (a "lower-tier pass-through entity") shall be subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier pass-through entity to each of its nonresident members. The [tax agency] shall apply tax withheld and paid over by a pass-through entity on distributions to a lower-tier pass-through entity to the withholding required of that lower-tier pass-through entity.

B. A pass-through entity shall, at the time of payment made pursuant to this section, deliver to the department a return upon a form prescribed by the department showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the department may require. A pass-through entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such member on a form prescribed by the department.

C. Notwithstanding subsection A, a pass-through entity is not required to withhold tax for a nonresident member if

- (1) the member has a pro rata or distributive share of income of the pass-through entity from doing business in, or deriving income from sources within, this State of less than \$1,000 per annual accounting period;
- (2) the [tax agency] has determined by regulation, ruling or instruction that the member's income is not subject to withholding; or
- (3) the member elects to have the tax due paid as part of a composite return filed by the pass-through entity under Section 2; or
- (4) the entity is a publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for the purposes of the Internal Revenue Code and that has agreed to file an annual information return reporting the name, address, taxpayer identification number and other information requested by the [tax department] of each unitholder with an income in the state in excess of \$500.