

701—405.6(422) Election out of the composite return tax requirement.

405.6(1) *In general.* A nonresident member may elect to be excluded from a pass-through entity's composite return unless prohibited from doing so by the department under subrule 405.6(2). Electing out of the composite return only relieves the pass-through entity of the requirement to pay composite return tax on behalf of that nonresident member. It does not relieve the pass-through entity of the requirement to report that nonresident member on a composite return. For a nonresident member to be excluded from the composite return tax payment, both the nonresident member and the pass-through entity must complete and sign the Nonresident Member Composite Agreement, available on the department's website. The Nonresident Member Composite Agreement must be completed and signed by all parties prior to the pass-through entity's composite return due date, including extensions. The Nonresident Member Composite Agreement is only valid for the tax year for which it is executed. The nonresident member and the pass-through entity must complete and sign a separate Nonresident Member Composite Agreement for each tax year in which the nonresident member seeks to be excluded from the composite return.

405.6(2) *Circumstances in which a pass-through entity or nonresident member may not elect out of the composite return requirement.*

a. The ability to elect out of the composite return is conditionally granted by the department based on the nonresident member's promise to comply with the filing and payment requirements listed in subrule 405.6(3) and the pass-through entity's compliance with Iowa tax law.

b. If information available to the department indicates that the pass-through entity has not complied with Iowa tax law, including but not limited to properly reporting or sourcing its income or other tax items within and without Iowa, the department may revoke the pass-through entity's ability to enter into a Nonresident Member Composite Agreement with its nonresident members.

c. If information available to the department indicates that a nonresident member has not complied with the filing and payment requirements listed in subrule 405.6(3), the department may revoke the pass-through entity's ability to enter into a Nonresident Member Composite Agreement with that particular nonresident member.

d. The pass-through entity will be notified in writing of a revocation under paragraph 405.6(2) "b" or "c," and such revocation will take effect 30 days following the date on the revocation letter. The revocation will not affect any Nonresident Member Composite Agreement entered into prior to the effective date of the revocation. After such revocation, a pass-through entity will not be allowed to enter into a Nonresident Member Composite Agreement with the affected nonresident members without written permission from the department.

405.6(3) *Filing and payment requirements for a nonresident member electing out of composite return requirement.* To elect out of the composite return requirement, a nonresident member must agree to all of the following in the Nonresident Member Composite Agreement:

a. The nonresident member shall file an Iowa income or franchise tax return, unless such return is subject to a filing threshold and the nonresident member falls below that threshold and is not required to file.

b. The nonresident member shall timely pay all Iowa income or franchise tax related to the nonresident member's distributive share of Iowa-source income from the pass-through entity, including, if applicable, estimated tax payments and composite return tax payments.

c. The nonresident member shall acknowledge that the nonresident member is subject to personal jurisdiction in Iowa for the collection of Iowa income or franchise tax liability.

405.6(4) *Retention of records.* The signed Nonresident Member Composite Agreement is not required to be submitted with the composite return but shall be retained by the pass-through entity and submitted to the department upon request.

405.6(5) *Liability for unpaid tax, penalty, and interest for a nonresident member electing out of the composite return requirement.* A pass-through entity that enters into a Nonresident Member Composite Agreement with a nonresident member will remain jointly and severally liable for any unpaid composite return tax, penalty, and interest attributable to the electing nonresident member's distributive share of Iowa-source income from the pass-through entity. If the department determines that a nonresident member has

failed to comply with the tax filing and payment requirements agreed to in subrule 405.6(3), it may collect the unpaid composite return tax, penalty, and interest directly from the pass-through entity.

This rule is intended to implement Iowa Code section 422.16B.

[ARC 6900C, IAB 2/22/23, effective 3/29/23]